

## Environmental Protection Agency

1552.235-76

CONTROL AND SECURITY OF FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

The offeror certifies that—

—the Contractor and its employees have read and are familiar with the requirements for the control and security of Federal Insecticide, Fungicide, and Rodenticide Act confidential business information contained in the manual entitled “Federal Insecticide, Fungicide, and Rodenticide Act Information Security Manual.” (See also 1552.235-77 elsewhere in this solicitation.)

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

### **1552.235-73 Access to Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).**

As prescribed in 1535.007(a), insert the following provision:

ACCESS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled “FIFRA Information Security Manual.” These procedures include applying for FIFRA CBI access authorization for each individual working under the contract who will have access to FIFRA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235-70, 1552.235- 71, and 1552.235-77 that are appropriate to the activities set forth in the contract.

Until EPA has approved the Contractor's security plan, the Contractor may not be authorized for FIFRA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

### **1552.235-74 Control and Security of Toxic Substances Control Act Confidential Business Information (Apr 1996).**

As prescribed in 1535.007(b), insert the following provision:

CONTROL AND SECURITY OF TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

The offeror certifies that—

—the Contractor and its employees have read and are familiar with the requirements for the control and security of Toxic Substances Control Act confidential business information contained in the manual entitled “Toxic Substances Control Act Confidential Business Information Security Manual.” (See also 1552.235-78 elsewhere in this solicitation.)

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

### **1552.235-75 Access to Toxic Substances Control Act Confidential Business Information (Apr 1996).**

As prescribed in 1535.007(b), insert the following provision:

ACCESS TO TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

In order to perform duties under the contract, the Contractor will need to be authorized for access to Toxic Substances Control Act (TSCA) confidential business information (CBI). The Contractor and all of its employees handling CBI while working under the contract will be required to follow the procedures contained in the security manual entitled “TSCA Confidential Business Information Security Manual.” These procedures include applying for TSCA CBI access authorization for each individual working under the contract who will have access to TSCA CBI, execution of confidentiality agreements, and designation by the Contractor of an individual to serve as a Document Control Officer. The Contractor will be required to abide by those clauses contained in EPAAR 1552.235-70, 1552.235- 71, and 1552.235-78 that are appropriate to the activities set forth in the contract.

Until EPA has inspected and approved the Contractor's facilities, the Contractor may not be authorized for TSCA CBI access away from EPA facilities.

(End of Provision)

[61 FR 14265, Apr. 1, 1996]

### **1552.235-76 Treatment of Confidential Business Information (Apr 1996).**

As prescribed in 1535.007-70(c), insert the following clause:

TREATMENT OF CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose

confidential business information (CBI) to the Contractor necessary to carry out the work required under this contract. The Contractor agrees to use the CBI only under the following conditions:

(1) The Contractor and Contractor's employees shall (i) use the CBI only for the purposes of carrying out the work required by the contract; (ii) not disclose the information to anyone other than properly cleared EPA employees without the prior written approval of the Assistant General Counsel for Information Law or his/her designee; and (iii) return the CBI to the PO or his/her designee, whenever the information is no longer required by the Contractor for performance of the work required by the contract, or upon completion of the contract.

(2) The Contractor shall obtain a written agreement to honor the above limitations from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(3) The Contractor agrees that these contract conditions concerning the use and disclosure of CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected businesses having a proprietary interest in the information.

(4) The Contractor shall not use any CBI supplied by EPA or obtained during performance hereunder to compete with any business to which the CBI relates.

(b) The Contractor agrees to obtain the written consent of the CO, after a written determination by the appropriate program office, prior to entering into any subcontract that will involve the disclosure of CBI by the Contractor to the subcontractor. The Contractor agrees to include this clause, including this paragraph (b), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(End of Clause)

[61 FR 14266, Apr. 1, 1996]

**1552.235-77 Data Security for Federal Insecticide, Fungicide, and Rodenticide Act Confidential Business Information (Apr 1996).**

As prescribed in 1535.007-70(d), insert the following clause:

DATA SECURITY FOR FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)

The Contractor shall handle Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality,"

the provisions set forth below, and the Contractor's approved detailed security plan.

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose FIFRA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all FIFRA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the FIFRA Information Security Manual. The manual may be obtained from the Project Officer (PO) or the Chief, Information Services Branch (ISB), Program Management and Support Division, Office of Pesticide Programs (OPP) (H7502C), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(2) The Contractor and Contractor's employees shall follow the security procedures set forth in the Contractor's security plan(s) approved by EPA.

(3) Prior to receipt of FIFRA CBI by the Contractor, the Contractor shall submit a certification statement to the Chief of the ISB, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to FIFRA CBI have been briefed on the handling, control and security requirements set forth in the FIFRA Information Security Manual.

(4) The Contractor Document Control Officer (DCO) shall obtain a signed copy of the FIFRA "Contractor Employee Confidentiality Agreement" from each of the Contractor's employees who will have access to the information before the employee is allowed access.

(b) The Contractor agrees that these requirements concerning protection of FIFRA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under FIFRA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in FIFRA (7 U.S.C. 136h(f)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to

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the EPA PO or his/her designee all documents, logs, and magnetic media which contain FIFRA CBI. In addition, each Contractor employee who has received FIFRA CBI clearance will sign a "Confidentiality Agreement for Contractor Employees Upon Relinquishing FIFRA CBI Access Authority." The Contractor DCO will also forward those agreements to the EPA PO or his/her designee, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996]

### **1552.235-78 Data security for Toxic Substances Control Act confidential business information (Apr 1996).**

As prescribed in 1535.007-70(e), insert the following clause:

#### **DATA SECURITY FOR TOXIC SUBSTANCES CONTROL ACT CONFIDENTIAL BUSINESS INFORMATION (APR 1996)**

The Contractor shall handle Toxic Substances Control Act (TSCA) confidential business information (CBI) in accordance with the contract clause entitled "Treatment of Confidential Business Information" and "Screening Business Information for Claims of Confidentiality."

(a) The Project Officer (PO) or his/her designee, after a written determination by the appropriate program office, may disclose TSCA CBI to the contractor necessary to carry out the work required under this contract. The Contractor shall protect all TSCA CBI to which it has access (including CBI used in its computer operations) in accordance with the following requirements:

(1) The Contractor and Contractor's employees shall follow the security procedures set forth in the TSCA CBI Security Manual. The manual may be obtained from the Director, Information Management Division (IMD), Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA), 401 M Street, SW, Washington, DC 20460. Prior to receipt of TSCA CBI by the Contractor, the Contractor shall submit a certification statement to the Director of the EPA OPPT/Office of Program Management and Evaluation, with a copy to the Contracting Officer (CO), certifying that all employees who will be cleared for access to TSCA CBI have been briefed on the han-

dling, control, and security requirements set forth in the TSCA CBI Security Manual.

(2) The Contractor shall permit access to and inspection of the Contractor's facilities in use under this contract by representatives of EPA's Assistant Administrator for Administration and Resources Management, and the TSCA Security Staff in the OPPT, or by the EPA Project Officer.

(3) The Contractor Document Control Officer (DCO) shall obtain a signed copy of EPA Form 7740-6, "TSCA CBI Access Request, Agreement, and Approval," from each of the Contractor's employees who will have access to the information before the employee is allowed access. In addition, the Contractor shall obtain from each employee who will be cleared for TSCA CBI access all information required by EPA or the U.S. Office of Personnel Management for EPA to conduct a Minimum Background Investigation.

(b) The Contractor agrees that these requirements concerning protection of TSCA CBI are included for the benefit of, and shall be enforceable by, both EPA and any affected business having a proprietary interest in the information.

(c) The Contractor understands that CBI obtained by EPA under TSCA may not be disclosed except as authorized by the Act, and that any unauthorized disclosure by the Contractor or the Contractor's employees may subject the Contractor and the Contractor's employees to the criminal penalties specified in TSCA (15 U.S.C. 2613(d)). For purposes of this contract, the only disclosures that EPA authorizes the Contractor to make are those set forth in the clause entitled "Treatment of Confidential Business Information."

(d) The Contractor agrees to include the provisions of this clause, including this paragraph (d), in all subcontracts awarded pursuant to this contract that require the furnishing of CBI to the subcontractor.

(e) At the request of EPA or at the end of the contract, the Contractor shall return to the EPA PO or his/her designee, all documents, logs, and magnetic media which contain TSCA CBI. In addition, each Contractor employee who has received TSCA CBI clearance will sign EPA Form 7740-18, "Confidentiality Agreement for Contractor Employees Upon Relinquishing TSCA CBI Access Authority." The Contractor DCO will also forward those agreements to the EPA OPPT/IMD, with a copy to the CO, at the end of the contract.

(f) If, subsequent to the date of this contract, the Government changes the security requirements, the CO shall equitably adjust affected provisions of this contract, in accordance with the "Changes" clause, when:

(1) The Contractor submits a timely written request for an equitable adjustment; and,

(2) The facts warrant an equitable adjustment.

(End of Clause)

[61 FR 14266, Apr. 1, 1996]

**1552.235-79 Release of contractor confidential business information (Apr 1996).**

As prescribed in 1535.007-70(f), insert the following clause:

**RELEASE OF CONTRACTOR CONFIDENTIAL BUSINESS INFORMATION (APR 1996)**

(a) The Environmental Protection Agency (EPA) may find it necessary to release information submitted by the Contractor either in response to this solicitation or pursuant to the provisions of this contract, to individuals not employed by EPA. Business information that is ordinarily entitled to confidential treatment under existing Agency regulations (40 CFR Part 2) may be included in the information released to these individuals. Accordingly, by submission of this proposal or signature on this contract or other contracts, the Contractor hereby consents to a limited release of its confidential business information (CBI).

(b) Possible circumstances where the Agency may release the Contractor's CBI include, but are not limited to the following:

(1) To other Agency contractors tasked with assisting the Agency in the recovery of Federal funds expended pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Sec. 9607, as amended, (CERCLA or Superfund);

(2) To the U.S. Department of Justice (DOJ) and contractors employed by DOJ for use in advising the Agency and representing the Agency in procedures for the recovery of Superfund expenditures;

(3) To parties liable, or potentially liable, for costs under CERCLA Sec. 107 (42 U.S.C. Sec. 9607), et al, and their insurers (Potentially Responsible Parties) for purposes of facilitating settlement or litigation of claims against such parties;

(4) To other Agency contractors who, for purposes of performing the work required under the respective contracts, require access to information the Agency obtained under the Clean Air Act (42 U.S.C. 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C.1251 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.);

(5) To other Agency contractors tasked with assisting the Agency in handling and

processing information and documents in the administration of Agency contracts, such as providing both preaward and post award audit support and specialized technical support to the Agency's technical evaluation panels;

(6) To employees of grantees working at EPA under the Senior Environmental Employment (SEE) Program;

(7) To Speaker of the House, President of the Senate, or Chairman of a Committee or Subcommittee;

(8) To entities such as the General Accounting Office, boards of contract appeals, and the Courts in the resolution of solicitation or contract protests and disputes;

(9) To Agency contractor employees engaged in information systems analysis, development, operation, and maintenance, including performing data processing and management functions for the Agency; and

(10) Pursuant to a court order or court-supervised agreement.

(c) The Agency recognizes an obligation to protect the contractor from competitive harm that may result from the release of such information to a competitor. (See also the clauses in this document entitled "Screening Business Information for Claims of Confidentiality" and "Treatment of Confidential Business Information.") Except where otherwise provided by law, the Agency will permit the release of CBI under subparagraphs (1), (3), (4), (5), (6), or (9) only pursuant to a confidentiality agreement.

(d) With respect to contractors, 1552.235-71 will be used as the confidentiality agreement. With respect to Potentially Responsible Parties, such confidentiality agreements may permit further disclosure to other entities where necessary to further settlement or litigation of claims under CERCLA. Such entities include, but are not limited to accounting firms and technical experts able to analyze the information, provided that they also agree to be bound by an appropriate confidentiality agreement.

(e) This clause does not authorize the Agency to release the Contractor's CBI to the public pursuant to a request filed under the Freedom of Information Act.

(f) The Contractor agrees to include this clause, including this paragraph (f), in all subcontracts at all levels awarded pursuant to this contract that require the furnishing of confidential business information by the subcontractor.

(End of Clause)

[61 FR 14267, Apr. 1, 1996]

**1552.236-70 Samples and certificates.**

As prescribed in 1536.521, insert the following contract clause in construction contracts.

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### SAMPLES AND CERTIFICATES (APR 1984)

When required by the specifications or the Contracting Officer, samples, certificates, and test data shall be submitted after award of the contract, prepaid, in time for proper action by the Contracting Officer or his/her designated representative. Certificates and test data shall be submitted in triplicate to show compliance of materials and construction specified in the contract performance requirements. Samples shall be submitted in duplicate by the Contractor, except as otherwise specified, to show compliance with the contract requirements. Materials or equipment for which samples, certifications or test data are required shall not be used in the work until approved in writing by the Contracting Officer.

(End of clause)

### 1552.237-70 Contract publication review procedures.

As prescribed in 1537.110, insert the following contract clause when the products of the contract are subject to contract publication review.

#### CONTRACT PUBLICATION REVIEW PROCEDURES (APR 1984)

(a) Material generated under this contract intended for release to the public is subject to the Agency's publication review process in accordance with the EPA Order on this subject and the following.

(b) Except as indicated in paragraph (c) of this contract, the Contractor shall not independently publish or print material generated under this contract until after completion of the EPA review process. The Project Officer will notify the Contractor of review completion within \_\_\_\_ calendar days after the Contractor's transmittal to the Project Officer of material generated under this contract. If the Contractor does not receive Project Officer notification within this period, the Contractor shall immediately notify the Contracting Officer in writing.

(c) The Contractor may publish, in a scientific journal, material resulting directly or indirectly from work performed under this contract, subject to the following:

(1) The Contractor shall submit to the Contracting Officer and the Project Officer, at least 30 days prior to publication, a copy of any paper, article, or other dissemination of information intended for publication.

(2) The Contractor shall include the following statement in a journal article which has not been subjected to EPA review: "Although the research described in this article has been funded wholly or in part by the United States Environmental Protection Agency contract (number) to (Name of Contractor), it has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred."

cy's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred."

(3) Following publication of the journal article, the Contractor shall submit five copies of the journal article to the Project Officer, and one copy to the Contracting Officer.

(d) If the Government has completed the review process and agreed that the contract material may be attributed to EPA, the Contractor shall include the following statement in the document:

This material has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name). It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

(e) If the Government has completed the review process, but decides not to publish the material, the Contractor may independently publish and distribute the material for its own use and its own expense, and shall include the following statement in any independent publication:

Although the information described in this article has been funded wholly or in part by the United States Environmental Protection Agency under contract (number) to (name), it does not necessarily reflect the views of the Agency and no official endorsement should be inferred.

(End of clause)

### 1552.237-71 Technical direction.

As prescribed in 1537.110, insert the following contract clause in cost-reimbursement contracts.

#### TECHNICAL DIRECTION (APR 1984)

(a) The Project Officer will provide technical direction on contract performance. Technical direction includes:

(1) Direction to the Contractor which assists him in accomplishing the Statement of Work.

(2) Comments on and approval of reports or other deliverables.

(b) Technical direction must be within the contract Statement of Work. The Project Officer does not have the authority to issue technical direction which (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the "Changes" clause; (3) causes an increase or decrease in the estimated cost of the contract; (4) alters the period of performance; or (5) changes any of the other express terms or conditions of the contract.

(c) Technical direction will be issued in writing by the Project Officer or confirmed

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by him in writing within five (5) calendar days after verbal issuance.

(End of clause)

**1552.237-72 Key personnel.**

As prescribed in 1537.110, insert the following contract clause when it is necessary for contract performance to identify Contractor key personnel.

KEY PERSONNEL (APR 1984)

(a) The Contractor shall assign to this contract the following key personnel:

(b) During the first ninety (90) days of performance, the Contractor shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Contractor shall notify the Contracting Officer within 15 calendar days after the occurrence of any of these events and provide the information required by paragraph (c) of this clause. After the initial 90-day period, the Contractor shall submit the information required by paragraph (c) to the Contracting Officer at least 15 days prior to making any permanent substitutions.

(c) The Contractor shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the Contractor within 15 calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of key personnel.

(End of clause)

**1552.237-73 Consultant services and consent.**

As prescribed in 1537.110, insert the following contract clause in contracts where the services of consultants are required. Enter "none" in paragraph (b) if consent is not given for one or more consultants at the time of award.

CONSULTANT SERVICES AND CONSENT (APR 1984)

(a) The Contractor shall obtain the consent of the Contracting Officer prior to using any consultant on this contract. The Contractor shall determine whether any consultant that is used has in effect an agreement with another Federal agency for similar or like serv-

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ices and, if so, shall notify the Contracting Officer.

(b) The Contractor may use the following consultants for the period of time at the rate shown.

Name	Number of (days) (hours)	Not to exceed the (daily) (hourly) rate of
.....	.....	\$.....
.....	.....	\$.....

(End of clause)

**1552.237-74 Publicity.**

As prescribed in 1537.110, insert the following contract clause in contracts pertaining to the removal or remedial activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) ("Super Fund") program. The term "on-scene coordinator" may be substituted with "Project Officer."

PUBLICITY (APR 1984)

(a) The Contractor agrees to notify and obtain the verbal approval of the on-scene coordinator (or Project Officer) prior to releasing any information to the news media regarding the removal or remedial activities being conducted under this contract.

(b) It is also agreed that the Contractor shall acknowledge EPA support whenever the work funded in whole or in part by this contract is publicized in any news media.

(End of clause)

**1552.237-75 Paperwork Reduction Act.**

As prescribed in 1537.110, insert this contract clause in any contract requiring the collection of identical information from ten (10) or more public respondents.

PAPERWORK REDUCTION ACT (APR 1984)

If it is established at award or subsequently becomes a contractual requirement to collect identical information from ten (10) or more public respondents, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* applies. In that event, the Contractor shall not take any action to solicit information from any of the public respondents until notified in writing by the Contracting officer that the required Office of Management and Budget (OMB) final clearance was received.

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(End of clause)

### **1552.239-103 Acquisition of Energy Star Compliant Microcomputers, Including Personal Computers, Monitors and Printers.**

As prescribed in 1523.7003, insert the following clause:

#### **ACQUISITION OF ENERGY STAR COMPLIANT MICROCOMPUTERS, INCLUDING PERSONAL COMPUTERS, MONITORS, AND PRINTERS**

(APRIL 1996)

(a) The Contractor shall provide computer products that meet EPA Energy Star requirements for energy efficiency. By acceptance of this contract, the Contractor certifies that all microcomputers, including personal computers, monitors, and printers to be provided under this contract meet EPA Energy Star requirements for energy efficiency.

(b) The Contractor shall ship all products with the standby feature activated or enabled.

(c) The Contractor shall provide models that have equivalent functionality to similar non-power managed models. This functionality should include as a minimum:

(1) The ability to run commercial off-the-shelf software both before and after recovery from a low power state, including retention of files opened (with no loss of data) before the power management feature was activated.

(2) If equipment will be used on a local area network (LAN), the contractor shall provide equipment that is fully compatible with network environments, e.g., personal computers resting in a low-power state should not be disconnected from the network.

(d) The contractor shall provide monitors that are capable of being powered down when connected to the accompanying personal computer.

(End of Clause)

[61 FR 14507, Apr. 2, 1996]

### **1552.242-70 Indirect costs.**

As prescribed in 1542.705-70, insert the following clause in all cost-reimbursement type contracts. If ceilings are not being established, enter "not applicable" in (c).

INDIRECT COSTS (APR 1984)

(a) In accordance with paragraph (d) of the "Allowable Cost and Payment" clause, the final indirect cost rates applicable to this contract shall be established between the Contractor and the appropriate Government

representative (EPA, other Government agency, or auditor), as provided by FAR 42.703(a). EPA's procedures require a Contracting Officer determination of indirect cost rates for its contracts. In those cases where EPA is the cognizant agency (see FAR 42.705-1), the final rate proposal shall be submitted to the cognizant audit activity and to the following designated Contracting Officer: Environmental Protection Agency, Chief, Cost Policy and Rate Negotiation Branch (3804F), Cost Advisory and Financial Analysis Division, Washington, DC 20460.

Where EPA is not the cognizant agency, the final rate proposal shall be submitted to the above-cited address, to the cognizant audit agency, and to the designated Contracting Officer of the cognizant agency. Upon establishment of the final indirect cost rates, the Contractor shall submit an executed Certificate of Current Cost or Pricing Data (see FAR 15.804-4) applicable to the data furnished in connection with the final rates to the cognizant audit agency. The final rates shall be contained in a written understanding between the Contractor and the appropriate Government representative. Pursuant to the "Allowable Cost and Payment" clause, the allowable indirect costs under this contract shall be obtained by applying the final agreed upon rate(s) to the appropriate bases.

(b) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

These billing rates may be prospectively or retroactively revised by mutual agreement, at the request of either the Government or the Contractor, to prevent substantial overpayment or underpayment.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this clause, ceilings are hereby established on indirect costs reimbursable under this contract. The Government shall not be obligated to pay the Contractor any additional amount on account of indirect costs in excess of the ceiling rates listed below:

Cost center	Period	Rate	Base
.....	.....	.....	.....
.....	.....	.....	.....

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(End of clause)

[49 FR 8867, Mar. 8, 1984, as amended at 59 FR 18977, Apr. 21, 1994]

**1552.245-70 Decontamination of government property.**

As prescribed in 1545.106(a) and 1545.303-71, insert the following contract clause when it is anticipated that a Contractor will use Government-furnished or Contractor-acquired property in the cleanup of hazardous or toxic substances in the environment.

DECONTAMINATION OF GOVERNMENT PROPERTY  
(APR 1984)

In addition to the requirements of the "Government Property" clause, the Contractor shall certify in writing that any Government-furnished property or Contractor-acquired property is returned to the Government free from contamination by any hazardous or toxic substances.

(End of clause)

**1552.245-71 Government-furnished data.**

As prescribed in 1545.106(b), insert the following contract clause in any contract that the Government is to furnish the Contractor data. Identify in the clause the data to be provided.

GOVERNMENT-FURNISHED DATA (APR 1984)

(a) The Government shall deliver to the Contractor the Government-furnished data described in the contract. If the data, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the "Changes" clause when:

(1) The Contractor submits a timely written request for an equitable adjustment; and  
(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished data shall remain in the Government.

(c) The Contractor shall use the Government-furnished data only in connection with this contract.

(d) The following data will be furnished to the Contractor on or about the time indicated:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(End of clause)

**1552.245-72 Fabrication or acquisition of nonexpendable property.**

As prescribed in 1545.106(c), insert the following contract clause in all cost-reimbursement type contracts or contracts with cost-reimbursement portions.

FABRICATION OR ACQUISITION OF  
NONEXPENDABLE PROPERTY (APR 1984)

The Contractor shall not fabricate nor acquire under this contract, either directly or indirectly through a subcontract, any item of nonexpendable property without written approval from the Contracting Officer.

(End of clause)

**1552.246-70 Quality Assurance (QA) Program plan.**

As prescribed in 1546.201(b), insert the following solicitation provision in Requests for Proposals if a program plan is required. A QA program plan is a general statement of an offeror's capability for QA.

QUALITY ASSURANCE (QA) PROGRAM PLAN  
(APR 1984)

Each offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) program plan setting forth the offeror's capability for quality assurance. The plan shall address the following:

(a) A statement of policy concerning the organization's commitment to implement a Quality Control/Quality Assurance program to assure generation of measurement data of adequate quality to meet the requirements of the Statement of Work.

(b) An organizational chart showing the position of a QA function or person within the organization. It is highly desirable that the QA function or person be independent of the functional groups which generate measurement data.

(c) A delineation of the authority and responsibilities of the QA function or person and the related data quality responsibilities of other functional groups of the organization.

(d) The type and degree of experience in developing and applying Quality Control/Quality Assurance procedures to the proposed sampling and measurement methods needed for performance of the Statement of Work.

(e) The background and experience of the proposed personnel relevant to accomplish the QA specifications in the Statement of Work.



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1552.246-72

(f) The offeror's general approach for accomplishing the QA specifications in the Statement of Work.

(End of provision)

### 1552.246-71 Quality Assurance (QA) Project Plan.

As prescribed in 1546.201(c)(1), insert the following solicitation provision in Requests for Proposals when a QA project plan is required as part of the proposal submission. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. The project plan may be a part of an offeror's technical proposal, or a deliverable under the contract.

#### QUALITY ASSURANCE (QA) PROJECT PLAN (APR 1984)

The offeror, as a separate and identifiable part of its technical proposal, shall submit a Quality Assurance (QA) project plan which shall describe specific procedures and responsibilities needed to accomplish the QA specifications in the Statement of Work. The project plan shall consist of the following form and content:

- (a) Title page, with provision for approval signatures.
- (b) Table of contents.
- (c) Project description.
- (d) Project organization(s) and responsibilities.
- (e) Quality Assurance objectives for measurement data, in terms of precision, accuracy, completeness, representativeness and comparability.
- (f) Sampling procedures.
- (g) Sample custody.
- (h) Calibration procedures, references, and frequency.
- (i) Analytical procedures.
- (j) Data reduction, validation, and reporting.
- (k) Internal quality control checks and frequency.
- (l) Quality assurance performance audits, system audits, and frequency.
- (m) Quality Assurance reports to management.
- (n) Preventive maintenance procedures and schedules.
- (o) Specific procedures to be used in routinely assessing data precision and accuracy, representativeness, comparability, and completeness of the specific measurement parameters involved.
- (p) Correction action.

(End of provision)

[49 FR 8867, Mar. 8, 1984; 49 FR 24735, June 15, 1984]

### 1552.246-72 Quality Assurance (QA) Project Plan documentation.

As prescribed in 1546.201(c)(2), insert the following clause in negotiated contracts when QA Project Plan Documentation is needed. A QA project plan is a specific delineation of an offeror's approach for accomplishing the QA specifications in a Statement of Work. When offerors are required to submit a project plan, a program plan may or may not be required. When a QA project plan was not a required part of the technical proposal, the project plan may be required as a deliverable under the contract by use of the following. However, the Statement of Work must contain a specification for the form and content of the project plan before this paragraph may be used.

#### QUALITY ASSURANCE (QA) PROJECT PLAN DOCUMENTATION (APR 1984)

(a) The Contractor shall submit to the Project Officer \_\_\_\_ copies of a Draft Project Plan for Quality Assurance within \_\_\_\_ days after the effective date of the contract.

(b) The Government will review and return the Draft Project Plan indicating approval or disapproval, and comments, if necessary, within \_\_\_\_ calendar days. In the event the government delays review and return of the Draft Project Plan beyond the period specified, the Contractor shall immediately notify the Contracting Officer in writing. The Contractor shall deliver the Final Project Plan within \_\_\_\_ days after the effective date of the contract.

(c) The Contracting Officer will incorporate the approved Quality Assurance Project Plan into the contract.

(End of clause)

## PART 1553—FORMS

Sec.

1553.000 Scope of part.

### Subpart 1553.2—Prescription of Forms

1553.209 Contractor qualifications.

1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.

1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.

## 1553.000

- 1553.213 Small purchases and other simplified purchase procedures.
- 1553.213-70 EPA Form 1900-8, Procurement Request/Order.
- 1553.216 Types of contracts.
- 1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.
- 1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.
- 1553.232 Contract financing.
- 1553.232-70 EPA Form 1900-3, Assignee's Release.
- 1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.
- 1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.
- 1553.232-73 EPA Form 1900-6, Contractor's Release.
- 1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.
- 1553.232-75 EPA Form 1900-68, notice of contract costs suspended and/or disallowed.
- 1553.232-76 [Reserved]

AUTHORITY: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

SOURCE: 49 FR 8886, Mar. 8, 1984, unless otherwise noted.

EDITORIAL NOTE: Forms referenced in part 1553 do not appear in the Code of Federal Regulations.

### 1553.000 Scope of part.

This part prescribes Agency forms for use in acquisitions and contains requirements and information generally applicable to the forms.

### Subpart 1553.2—Prescription of Forms

#### 1553.209 Contractor qualifications.

##### 1553.209-70 EPA Form 1900-26, Contracting Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-26 shall be used by the Contracting Officer to record his/her evaluation of Contractor performance.

##### 1553.209-71 EPA Form 1900-27, Project Officer's Evaluation of Contractor Performance.

As prescribed in 1509.170-4(a), EPA Form 1900-27 shall be used by the Project Officer to record his/her evaluation of Contractor performance.

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### 1553.213 Small purchases and other simplified purchase procedures.

#### 1553.213-70 EPA Form 1900-8, Procurement Request/Order.

As prescribed in 1513.505-2, EPA Form 1900-8 may be used in lieu of Optional Forms 347 and 348 for individual purchases.

#### 1553.216 Types of contracts.

##### 1553.216-70 EPA Form 1900-41A, CPAF Contract Summary of Significant Performance Observation.

As prescribed in 1516.404-278, EPA Form 1900-41A shall be used to document significant performance observations under CPAF contracts.

##### 1553.216-71 EPA Form 1900-41B, CPAF Contract Individual Performance Event.

As prescribed in 1516.404-278, EPA Form 1900-41B shall be used to document individual performance events under CPAF contracts.

#### 1553.232 Contract financing.

##### 1553.232-70 EPA Form 1900-3, Assignee's Release.

As prescribed in 1532.805-70(a), the EPA Form 1900-3 is required to be submitted by the assignee for cost-reimbursement contracts prior to final payment under the contract.

##### 1553.232-71 EPA Form 1900-4, Assignee's Assignment of Refunds, Rebates, Credits and Other Amounts.

As prescribed in 1532.805-70(b), the EPA Form 1900-4 must accompany the assignee's release prior to final payment under cost-reimbursement contracts.

##### 1553.232-72 EPA Form 1900-5, Contractor's Assignment of Refunds, Rebates, and Credits.

As prescribed in 1532.805-70(c), the EPA Form 1900-5 must be prepared by the Contractor prior to final payment under cost-reimbursement contracts and must accompany the Contractor's release.

**1553.232-73 EPA Form 1900-6, Contractor's Release.**

As prescribed in 1532.805-70(d), the EPA Form 1900-6 must be submitted by the Contractor under cost-reimbursement contracts prior to final payment thereunder.

**1553.232-74 EPA Form 1900-10, Contractor's Cumulative Claim and Reconciliation.**

As prescribed in 1532.170(a), the EPA Form 1900-10 shall be used for an accounting of the cumulative charges and costs for cost-reimbursement contracts from the inception of the contract to completion. It shall be submitted by the Contractor along with the completion voucher.

**1553.232-75 EPA Form 1900-68, notice of contract costs suspended and/or disallowed.**

As prescribed in 1532.170(b), the Contracting Officer shall insert EPA Form 1900-68 in all cost-reimbursement type and fixed-rate type contracts.

[61 FR 29318, June 10, 1996]

**1553.232-76 [Reserved]**

APPENDIX I TO CHAPTER 15—ENVIRONMENTAL PROTECTION AGENCY; CLASS JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION IN ACQUISITIONS FROM THE FEDERAL PRISON INDUSTRIES AND THE GOVERNMENT PRINTING OFFICE

1. The Environmental Protection Agency (EPA) anticipates the acquisition of supplies from the Federal Prison Industries (UNICOR) and the acquisition of Government printing and related supplies from the Government Printing Office (GPO) to meet the needs of the Agency.

2. The Agency is authorized to make these acquisitions from the UNICOR and GPO without full and open competition under the authority in 41 U.S.C. 253(c)(5) as sources required by statute, i.e., 18 U.S.C. 4124 and 44 U.S.C. 501-504, 1121.

3. The anticipated cost of these acquisitions to the Agency will be fair and reasonable.

4. This class justification applies to any proposed acquisition made by the EPA from the UNICOR or GPO.

5. This class justification will remain in effect until April 1, 1988.

6. The undersigned certifies that this class justification is accurate and complete to the best of his knowledge and belief.

[50 FR 14361, Apr. 11, 1985]



# CHAPTER 16—OFFICE OF PERSONNEL MANAGEMENT FEDERAL EMPLOYEES HEALTH BENEFITS ACQUISITION REGULATION

(Parts 1600 to 1699)

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## SUBCHAPTER A—GENERAL

### PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

#### Subpart 1601.1—Purpose, Authority, Issuance

Sec.

1601.101 Purpose.

1601.102 Authority.

1601.103 Applicability.

1601.104 Issuance.

1601.104-1 Publication and code arrangement.

1601.104-2 Arrangement of regulation.

1601.105 OMB approval under the Paperwork Reduction Act.

#### Subpart 1601.3—Agency Acquisition Regulation (FEHBP)

1601.301 Policy.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16037, May 1, 1987, unless otherwise noted.

#### Subpart 1601.1—Purpose, Authority, Issuance

##### 1601.101 Purpose.

(a) This subpart establishes chapter 16, Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation, within title 48, the Federal Acquisition Regulation System, of the Code of Federal Regulations. The short title of this regulation shall be FEHBP.

(b) The purpose of the FEHBP is to implement and supplement the Federal Acquisition Regulation (FAR) specifically for acquiring and administering contracts with health insurance carriers in the Federal Employees Health Benefits Program (FEHBP).

##### 1601.102 Authority.

(a) The FEHBP is issued by the Director of the Office of Personnel Management in accordance with the authority of 5 U.S.C. chapter 89 and other applicable law and regulation.

(b) The FEHBP does not replace or incorporate regulations found at 5 CFR part 890, which provides the substantive policy guidance for administration of the FEHBP under 5 U.S.C.

Chapter 89. The following is the order of precedence in interpreting a contract provision under the FEHBP:

- (1) 5 U.S.C. Chapter 89;
- (2) 5 CFR part 890;
- (3) 48 CFR Chapters 1 and 16;
- (4) The FEHBP contract.

[52 FR 16037, May 1, 1987, as amended at 59 FR 14764, Mar. 30, 1994]

##### 1601.103 Applicability.

The FAR is generally applicable to contracts negotiated in the FEHBP pursuant to 5 U.S.C. chapter 89. The FEHBP implements and supplements the FAR where necessary to identify basic and significant acquisition policies unique to the FEHBP.

##### 1601.104 Issuance.

##### 1601.104-1 Publication and code arrangement.

(a) The FEHBP and its subsequent changes are published in

(1) Daily issues of the FEDERAL REGISTER; and

(2) Cumulative form of the Code of Federal Regulations.

(b) The FEHBP is issued as chapter 16 of title 48 of the Code of Federal Regulations.

##### 1601.104-2 Arrangement of regulation.

(a) *General.* The FEHBP conforms with the arrangement and numbering system prescribed by FAR 1.104. However, when a FAR part or subpart is adequate for use without further OPM implementation or supplementation, there will be no corresponding FEHBP part, subpart, etc. The FEHBP is to be used in conjunction with the FAR and the order for use is:

- (1) FAR;
- (2) FEHBP.

(b) *Citation.* (1) In formal documents, such as legal briefs, citation of chapter 16 material that has been published in the FEDERAL REGISTER will be to title 48 of the Code of Federal Regulations.

(2) In informal documents, any section of chapter 16 may be identified as “FEHBP” followed by the section number.

**1601.105 OMB approval under the Paperwork Reduction Act.**

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply.

Provision	Control No.
FEHBAR 1604.705 .....	3206-0145
FAR 9.1 .....	3206-0145

**Subpart 1601.3—Agency Acquisition Regulation (FEHBAR)****1601.301 Policy.**

(a) Procedures, contract clauses, and other aspects of the acquisition process for contracts in the FEHBP shall be consistent with the principles of the FAR. Changes to the FAR that are otherwise authorized by statute or applicable regulation, dictated by the practical realities associated with the unique nature of health care procurements, or necessary to satisfy specific needs of the Office of Personnel Management shall be implemented as amendments to the FEHBAR and published in the FEDERAL REGISTER, or as deviations to the FAR in accordance with FAR subpart 1.4.

(b) Internal procedures, instructions, and guides that are necessary to clarify or implement the FEHBAR *within* OPM may be issued by agency officials specifically designated by the Director, OPM. Normally, such designations will be specified in the OPM Administrative Manual, which is routinely available to agency employees and will be made available to interested outside parties upon request. Clarifying or implementing procedures, instructions, and guides issued pursuant to this section of the FEHBAR must—

(1) Be consistent with the policies and procedures contained in this regulation as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this regulation to the extent practicable.

**PART 1602—DEFINITIONS OF WORDS AND TERMS**

Sec.

1602.000-70 Scope of part.

**Subpart 1602.1—Definitions of FEHBP Terms**

1602.170 Definition of terms.

1602.170-1 Carrier.

1602.170-2 Community rate.

1602.170-3 Comprehensive medical plan.

1602.170-4 Contractor.

1602.170-5 Director.

1602.170-6 Experience rate.

1602.170-7 FEHBP.

1602.170-8 Health benefits plan.

1602.170-9 Letter of credit.

1602.170-10 OPM.

1602.170-11 Similarly sized subscriber groups.

1602.170-12 Subcontractor.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16038, May 1, 1987, unless otherwise noted.

**1602.000-70 Scope of part.**

This part defines words and terms commonly used in this regulation.

**Subpart 1602.1—Definitions of FEHBP Terms****1602.170 Definition of terms.**

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

**1602.170-1 Carrier.**

*Carrier*, as defined in 5 U.S.C. 8901(7), means a voluntary association, corporation, partnership, or other non-governmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization.



**1602.170-2 Community rate.**

(a) *Community rate* means a rate of payment based on a per member per month capitation rate or its equivalent that applies to a combination of the subscriber groups for a comprehensive medical plan. This capitation rate or its equivalent is a market price consistent with FAR 15.804-3. References in this subchapter to “price analysis” or “established market price” relating to the applicability of policy and contract clauses refer to comprehensive medical plans using community rates.

(b) *Adjusted community rate* means a community rate which has been adjusted for expected use of medical resources of the FEHBP group. An adjusted community rate is a prospective rate and cannot be retroactively revised to reflect actual experience, utilization, or costs of the FEHBP group.

[55 FR 27414, July 2, 1990]

**1602.170-3 Comprehensive medical plan.**

*Comprehensive Medical Plan* means a plan as defined under 5 U.S.C. 8903(4).

**1602.170-4 Contractor.**

*Contractor* means carrier.

**1602.170-5 Director.**

*Director* means the Director of the Office of Personnel Management.

**1602.170-6 Experience rate.**

*Experience rate* means a rate for a given group that is the result of that group's actual paid claims, administrative expenses, retentions, and estimated claims incurred but not reported, adjusted for benefit modifications, utilization trends, and economic trends. Actual paid claims include any actual or negotiated benefits payments made to providers of medical services for the provision of health care such as capitation not adjusted for specific groups, per diems, and Diagnostic Related Group (DRG) payments.

[54 FR 27414, July 2, 1990]

**1602.170-7 FEHBP.**

*FEHBP* means the Federal Employees Health Benefits Program.

**1602.170-8 Health benefits plan.**

*Health benefits plan*, as defined in 5 U.S.C. 8901(6), means a group insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or similar group arrangements provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health services.

**1602.170-9 Letter of credit.**

*Letter of credit* means the method by which certain carriers, and their underwriters if authorized, receive recurring premium payments and contingency reserve payments by drawing against a commitment (certified by a responsible OPM official) which specifies a dollar amount available. For each carrier participating in the letter of credit arrangement for payment under this part, the terms “carrier reserves,” and “special reserves” include any balance in the carrier's letter of credit account.

[53 FR 51783, Dec. 23, 1988, as amended at 57 FR 14359, Apr. 20, 1992]

**1602.170-10 OPM.**

*OPM* means the Office of Personnel Management.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988]

**§ 1602.170-11 Similarly sized subscriber groups.**

*Similarly sized subscriber groups* (SSSGs) are a comprehensive medical plan's two employer groups that:

(a) As of the date specified by OPM in the rate instructions, have a subscriber enrollment closest to the FEHBP subscriber enrollment; and,

(b) Use any rating method other than retrospective experience rating; and,

(c) Meet the criteria specified in the rate instructions issued by OPM.

[59 FR 14764, Mar. 30, 1994]

**1602.170-12 Subcontractor.**

*Subcontractor* means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a

## 1603.701

prime contractor or another subcontractor, except for providers of direct medical services or supplies pursuant to the Carrier's health benefits plan.

[52 FR 16038, May 1, 1987. Redesignated at 53 FR 51783, Dec. 23, 1988, and further redesignated at 55 FR 27414, July 2, 1990]

## PART 1603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

Sec.

1603.701 Policy.

1603.702 Additional guidelines.

1603.703 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16039, May 1, 1987, unless otherwise noted.

### Subpart 1603.70—Misleading, Deceptive, or Unfair Advertising

#### 1603.701 Policy.

(a) OPM prepares and distributes or makes available to Federal employees and annuitants a comparison booklet which presents summary information and a benefits brochure which details benefits, limitations, and premium rates for all participating plans. OPM does not encourage, support, or reimburse participating carriers for the costs of advertisements. However, while OPM believes that advertising is unnecessary, it recognizes that the decision to use advertising rests with each carrier.

(b) OPM discourages advertising that is misleading or deceptive. This includes advertising that is directed at other carriers' plans participating in the Program and which uses incomplete or inappropriate comparisons or disparaging or minimizing techniques. Such unfair practices are prejudicial to the interests of the vast majority of carriers whose advertising is fair and accurate.

(c) Failure to conform to the requirements of this subpart shall be a material breach of the contract and may result in withdrawal of approval to con-

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tinue participation in the FEHB Program.

#### 1603.702 Additional guidelines.

Any advertisements which identify a carrier's participation in the FEHB shall—

(a) Be limited to the merits of the carrier's FEHB plan and shall be limited to factual statements of the benefits and rates offered by that plan. The official document for benefit and rate comparisons among FEHB plans is the comparison chart issued by OPM.

(b) Not use the FEHB logo.

(c) Recognize that the officially approved plan brochure is the sole contractual statement of benefits, limitations, and exclusions. All advertisements that in any way discuss plan benefits shall contain the following statement:

This is a summary (or brief description) of the features of the (plan's name). Before making a final decision, please read the plan's officially approved brochure, (brochure number). All benefits are subject to the definitions, limitations, and exclusions set forth in the official brochure.

(d) Set forth the rates for the plan, if the advertisements discuss benefits.

(e) Not give instructions on enrollment. Statements on enrollment procedures, requirements, or eligibility shall be limited to those such as:

To sign up, fill out a Health Benefits Registration Form (Standard Form 2809) from your personnel office indicating the enrollment you want:

The enrollment codes for (plan's name) are:

Self Only \_\_\_\_\_ Enrollment Code \_\_\_\_\_

Self and Family \_\_\_\_\_ Enrollment Code \_\_\_\_\_

The form must then be returned to your personnel office before the (date) deadline. Your (plan's name) coverage will begin the first pay period in January, (year). If you are a retired Federal employee and need forms, contact the Office of Personnel Management at P.O. Box 809, Washington, DC 20044.

#### 1603.703 Contract clause.

The clause at 1652.203-70 shall be inserted in all FEHB contracts.

**PART 1604—ADMINISTRATIVE  
MATTERS****Subpart 1604.7—Contractor Records  
Retention**

Sec.

1604.703 Policy.

1604.705 Specific retention periods.

**Subpart 1604.70—Coordination of Benefits**

1604.7001 Coordination of benefits clause.

**Subpart 1604.71—Disputed Health Benefit  
Claims**1604.7101 Filing health benefit claims/court  
review of disputed claims.AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48  
CFR 1.301.SOURCE: 52 FR 16039, May 1, 1987, unless  
otherwise noted.**Subpart 1604.7—Contractor  
Records Retention****1604.703 Policy.**

In view of the unique payment schedules of FEHBP contracts and the compelling need for records retention periods sufficient to protect the Government's interest, contractors shall be required to maintain records for periods determined in accordance with the provisions of FAR 4.703(b)(1).

**1604.705 Specific retention periods.**

Unless the contracting officer determines that there exists a compelling reason to include only the contract clause specified by FAR 52.215-2 "Audit—Negotiation," the contracting officer shall insert the clause at 1652.204-70 in all FEHBP contracts.

**Subpart 1604.70—Coordination of  
Benefits****1604.7001 Coordination of benefits  
clause.**

OPM expects all FEHBP plans to coordinate benefits. Accordingly, the clause set forth at 1652.204-71 shall be inserted in all FEHBP contracts.

**Subpart 1604.71—Disputed Health  
Benefit Claims****§ 1604.7101 Filing Health Benefit  
Claims/Court Review of Disputed  
Claims.**

Guidelines for a Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204-72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

[61 FR 15198, Apr. 5, 1996]

## SUBCHAPTER B—ACQUISITION PLANNING

### PART 1605—PUBLICIZING CONTRACT ACTIONS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### 1605.000 Applicability.

FAR part 5 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

[52 FR 16039, May 1, 1987]

### PART 1606—COMPETITION REQUIREMENTS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### 1606.001 Applicability.

FAR part 6 has no practical application to FEHBP contracts in view of the statutory exception provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

### PART 1609—CONTRACTOR QUALIFICATIONS

#### Subpart 1609.4—Debarment, Suspension, and Ineligibility

1609.470 Notification of Debarment, Suspension, and Ineligibility.

1609.471 Contractor certification.

#### Subpart 1609.70—Minimum Standards for Health Benefits Carriers

1609.7001 Minimum standards for health benefits carriers.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### Subpart 1609.4—Debarment, Suspension, and Ineligibility

SOURCE: 59 FR 14764, Mar. 30, 1994, unless otherwise noted.

#### 1609.470 Notification of Debarment, Suspension, and Ineligibility.

(FAR) 48 CFR, part 9, subpart 9.4 is supplemented as set out in the certification required in 1609.471 by converting the FAR “offeror’s” certification at (FAR) 48 CFR 52.209-5 into a carrier’s certification. This change reflects the FEHBP’s statutory exemption from competitive bidding (5 U.S.C. 8902), which obviates the issuance of solicitations.

#### 1609.471 Contractor certification.

All FEHBP carriers and applicant carriers are required to submit the following certification. Applicant carriers must submit the certification prior to OPM’s determination on the application for approval to participate in the FEHBP. Current carriers must submit the certification once, along with their benefit and rate proposals for the 1995 contract year.

#### DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

The Carrier certifies, to the best of its knowledge and belief, that—

(a) The Carrier and/or any of its Principals—

(1) Are ( ) are not ( ) presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2) Have ( ) have not ( ), within a 3-year period preceding this certification, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(3) Are ( ) are not ( ) presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(2) of this clause.

(4) The Carrier has ( ) has not ( ), within a 3-year period preceding this certification, had one or more contracts terminated for default by any Federal agency.

(b) *Principals*, for the purposes of this certification, means officers; directors; owners;

partners; and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

This certification concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the Carrier subject to prosecution under section 1001, title 18, United States Code.

(c) The Carrier shall provide immediate written notice to the Contracting Officer if, at any time, the Carrier learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(d) A Carrier's certification that any of the actions mentioned in the certification exists will not necessarily result in termination of the contract. However, the certification, or the Carrier's failure to provide such additional information as requested by the Contracting Officer, will be considered in connection with a determination of the Carrier's responsibility under subpart 1609.70, Minimum Standards for Health Benefits Carriers.

(e) Nothing contained in the certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this section. The knowledge and information of the Carrier is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(f) The certification in this section is a material representation of fact upon which reliance is placed by the Contracting Officer. If it is later determined that the Carrier knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract for default.

Carrier Name: \_\_\_\_\_

Name of Chief Executive Officer \_\_\_\_\_

Date signed: \_\_\_\_\_

(End of Certificate)

### **Subpart 1609.70—Minimum Standards for Health Benefits Carriers**

#### **1609.7001 Minimum standards for health benefits carriers.**

(a) The carrier of an approved health benefits plan shall meet the requirements of chapter 89 of title 5, United States Code; part 890 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations, and the following standards. The carrier

shall continue to meet the requirements of chapter 89 of title 5, United States Code, and the standards cited in this paragraph while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the contract in accordance with 5 CFR 890.204.

(1) It must be lawfully engaged in the business of supplying health benefits.

(2) It must have, in the judgement of OPM, the financial resources and experience in the field of health benefits to carry out its obligations under the plan.

(3) It must keep such reasonable financial and statistical records, and furnish such reasonable financial and statistical reports with respect to the plan, as may be requested by OPM.

(4) It must permit representatives of OPM and of the General Accounting Office to audit and examine its records and accounts which pertain, directly or indirectly, to the plan at such reasonable times and places as may be designated by OPM or the General Accounting Office.

(5) It must accept, subject to adjustment for error or fraud, in payment of its charges for health benefits for all enrollees in its plan, the enrollment charges received by the Employees Health Benefits (EHB) Fund less amounts set aside for the administrative and contingency reserves prescribed in 5 CFR 890.503. OPM makes available or pays the amounts within 30 days of receipt by the EHB Fund.

(6) A carrier that is an employee organization must continue coverage, without requirement of membership, of any eligible survivor annuitants, former spouses continuing coverage with the carrier under 5 CFR 890.803, children temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(2), or former spouses temporarily continuing coverage with the carrier under 5 CFR 890.1103(a)(3).

(7) It must timely submit to OPM a properly completed and signed novation or change-of-name agreement in accordance with subpart 1642.12 of this chapter.

(b) In addition to the standards in paragraph (a) of this section, the carrier must perform the contract in accordance with prudent business practices. A carrier's sustained poor business practice in the management or administration of a health benefits plan is cause for OPM's withdrawal of approval of the health benefits carrier and termination of the carrier's contract. Prudent business practices include, but are not limited to, the following:

- (1) Timely compliance with OPM instructions and directives.
- (2) Legal and ethical business and health care practices.
- (3) Compliance with the terms of the FEHB contract, regulations and statutes.
- (4) Timely and accurate adjudication of claims or rendering of medical services.
- (5) A system for accounting for costs incurred under the contract, when required, which includes segregating and pricing FEHB medical utilization and allocating indirect and administrative costs in a reasonable and equitable manner.
- (6) Accurate accounting reports of actual, allowable, allocable, and reasonable costs incurred in the administration of the contract.
- (7) Application of performance standards for assuring contract quality as required by 1646.270(d).
- (8) Establishment and maintenance of a system of internal control that provides reasonable assurance that:
  - (i) The provision and payments of benefits and other expenses are in compliance with legal, regulatory, and contractual guidelines;
  - (ii) FEHB funds, property, and other assets are safeguarded against waste,

loss, unauthorized use, or misappropriation; and,

(iii) Data are accurately and fairly disclosed in all reports required by OPM.

(c) The following types of activities are examples of poor business practices which adversely affect the health benefits carrier's responsibility under its contract. A pattern of poor conduct or evidence of misconduct in these areas is cause for OPM to withdraw approval of the carrier:

- (1) Presenting false claims by charging expenses to the contract which according to the contract terms are not chargeable to the contract;
  - (2) Using fraudulent or unethical business or health care practices or otherwise displaying a lack of business integrity or honesty;
  - (3) Repeatedly and knowingly providing false or misleading information in the rate setting process;
  - (4) Repeated failure to comply with OPM instructions and directives;
  - (5) Having an accounting system that is incapable of separately accounting for costs incurred under the contract and/or that lacks the internal controls necessary to fulfill the terms of the contract; and
  - (6) Failure to assure that the plan provides properly paid or denied claims, or providing medical services which are inconsistent with standards of good medical practice.
- (d) The Director or his or her designee will determine whether to propose withdrawal of approval and hold a hearing based on the seriousness of the carrier's actions and its proposed method to effect corrective action.

[57 FR 14359, Apr. 20, 1992. Redesignated and amended at 59 FR 14764, 14765, Mar. 30, 1994]

## SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

### PART 1614—SEALED BIDDING

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

#### 1614.000 Applicability.

FAR part 14 has no practical application to FEHBP contracts in view of the statutory exemption provided by 5 U.S.C. 8902.

[52 FR 16039, May 1, 1987]

### PART 1615—CONTRACTING BY NEGOTIATION

#### Subpart 1615.1—General Requirements for Negotiation

Sec.

1615.170 Negotiation authority.

#### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

1615.401 Applicability.

#### Subpart 1615.6—Source Selection

1615.602 Applicability.

#### Subpart 1615.8—Price Negotiation

1615.802 Policy.

1615.804–70 Certificate of accurate pricing for community rate plans.

1615.804–71 Supplemental representation for SF 1412.

1615.804–72 Rate reduction for defective pricing or defective cost or pricing data.

1615.805–70 Carrier investment of FEHB funds.

1615.805–71 Investment income clause.

#### Subpart 1615.9—Profit

1615.902 Policy.

1615.905 Profit analysis factors.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16040, May 1, 1987, unless otherwise noted.

#### Subpart 1615.1—General Requirements for Negotiation

##### 1615.170 Negotiation authority.

The authority to negotiate FEHBP contracts is conferred by 5 U.S.C. 8902.

#### Subpart 1615.4—Solicitations and Receipt of Proposals and Quotations

##### 1615.401 Applicability.

FAR subpart 15.4 has no practical application to the FEHBP because OPM does not issue solicitations. Eligible contractors (i.e., qualified health benefits carriers) are identified in accordance with 5 U.S.C. 8903. Offerors voluntarily come forth in accordance with procedures provided in 5 CFR part 890.

#### Subpart 1615.6—Source Selection

##### 1615.602 Applicability.

FAR subpart 15.6 has no practical application to the FEHBP because prospective contractors (carriers) are considered for inclusion in the FEHBP in accordance with criteria provided in 5 U.S.C. chapter 89 and 5 CFR part 890 rather than on the basis of competition *between* prospective carriers.

#### Subpart 1615.8—Price Negotiation

##### 1615.802 Policy.

Pricing of FEHB contracts is governed by 5 U.S.C. 8902(i), 5 U.S.C. 8906, and other applicable law. FAR subpart 15.8 shall be implemented by applying the policies and procedures—to the extent practicable—as follows:

(a)(1) Cost analysis shall be used for contracts where premiums and subscription income are determined on the basis of experience rating.

(2) The application of FAR 15.802(b)(2) should not be construed to prohibit the consideration of preceding year surpluses or deficits in carrier-held reserves in the rate adjustments for subsequent year renewals of contracts based on cost analysis.

(b)(1) Price analysis for contracts where premiums and subscription income are based on community rates (market prices). For contracts with fewer than 1,500 FEHBP subscribers, OPM may rely on a basic reasonableness test in combination with a carrier's representation that the market price submitted on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, is based on the price offered to its similarly sized subscriber groups (see FEHBAR 1602.170-11).

(2) For contracts with 1,500 FEHBP subscribers or more and for contracts with fewer than 1,500 FEHBP subscribers that do not use the SF 1412, OPM shall require that the plan provide the data and methodology used to determine the FEHBP rates. OPM shall also require the data and methodology used to determine the rates for the plan's similarly sized subscriber groups.

(3) Contracts will be subject to a downward price adjustment if OPM determines that the Federal group was charged more than it would have been charged using a methodology consistent with that used for the SSSGs. Such adjustments will be based on the lowest rates determined for the Federal group using the methodology (including discounts) for the two SSSGs.

(4) FEHBP community rated carriers shall comply with SSSG criteria provided annually by OPM in the rate instructions for the applicable contract period.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27414, July 2, 1990; 59 FR 14765, Mar. 30, 1994]

**1615.804-70 Certificate of accurate pricing for community rated plans.**

The contracting officer shall require a carrier that rates using a community rate as defined by FEHBAR 1602.170-2 to execute the Certificate of Accurate Pricing for Community Rated Plans contained in this section unless the carrier has been exempted from filing certified cost or pricing data pursuant to 1615.802(b)(1). The carrier shall submit the Certificate to OPM at the time it submits its rate reconciliation.

**CERTIFICATE OF ACCURATE PRICING FOR  
COMMUNITY RATED PLANS**

This is to certify that, to the best of my knowledge and belief: (1) the cost or pricing data submitted (or, if not submitted, maintained and identified by the carrier as supporting documentation) to the Contracting Officer or the Contracting Officer's representative or designee in support of the \_\_\_\_\_\* FEHBP rates were developed in accordance with the requirements of 48 CFR Chapter 16 and the FEHBP contract, and are accurate, complete, and current as of the date this certificate is executed; and (2) The FEHBP rates were developed in a manner consistent with the methodology used to rate the plan's similarly sized subscriber groups and approved by OPM.

Firm: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

(End of Certificate)

[59 FR 14765, Mar. 30, 1994]

**1615.804-71 Supplemental representation for SF 1412.**

Carriers with less than 1,500 FEHBP subscribers may request an exemption from submission of certified cost and pricing data. The request for exemption is made on SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data (see FAR 53.301-1412), which contains a representation that all the statements made on or attached to the SF 1412 are correct. In addition to the representation made on the SF 1412, the Contracting Officer shall require the carrier to execute the Supplemental Representation for SF 1412 shown below. The carrier shall attach the supplemental representation to the SF 1412.

**SUPPLEMENTAL REPRESENTATION FOR SF 1412**

The Carrier represents that the market price used to determine the \_\_\_\_\_\* FEHBP rates is no greater than the market price quoted to the Carrier's similarly sized subscriber groups (see FEHBAR 1602.170-11); that adjustments made to the market price were consistent with the rating methodology used to rate the Carrier's similarly sized subscriber groups; and that the adjustments

\*Insert the year for which the rates apply. Normally, this will be the year for which the rates are being reconciled.



## Office of Personnel Management

1615.905

were developed in accordance with the requirements of 48 CFR chapter 16 and the FEHBP contract.

Firm \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
Signature \_\_\_\_\_  
Date of execution \_\_\_\_\_

\*Identify the time period to which the rates apply. The rate must be either the actual rate in effect for the current contract term or a quoted rate for the next contract term.

[55 FR 27414, July 2, 1990]

### **1615.804-72 Rate reduction for defective pricing or defective cost or pricing data.**

The clause set forth in 1652.215-70 shall be inserted in all FEHBP contracts based on established market price.

[55 FR 27415, July 2, 1990]

### **1615.805-70 Carrier investment of FEHB funds.**

(a) This paragraph does not apply to contracts based on price analysis.

(b) The carrier is required to invest and reinvest all funds on hand, including any attributable to the special reserve or the reserve for incurred but unpaid claims, exceeding the funds needed to discharge promptly the obligations incurred under the contract.

(c) The carrier is required to credit income earned from its investment of FEHB funds to the special reserve on behalf of the FEHB Program. If a carrier fails to invest excess FEHB funds or to credit any income due the contract, for whatever reason, it shall re- turn, or credit any investment income lost to OPM or the special reserve.

(d) *Investment income.* Investment income is the net amount earned by the carrier after deducting investment expenses.

[52 FR 16040, May 1, 1987, as amended at 55 FR 27415, July 2, 1990]

### **1615.805-71 Investment income clause.**

The clause set forth in 1652.215-71 shall be inserted in all contracts based on cost analysis.

## **Subpart 1615.9—Profit**

### **1615.902 Policy.**

(a) OPM will determine the profit or fee prenegotiation objective (service charge) portion of FEHBP contracts by use of a weighted guidelines structured approach when the pricing of such contracts is determined by cost analysis. The service charge so determined shall be the *total* service charge that may be negotiated for the contract and shall encompass any service charge (whether entitled service charge, profit, fee, contribution to reserves or surpluses, or any other title) that may have been negotiated by the prime contractor with any subcontractor or underwriter.

(b) OPM will not guarantee a minimum service charge.

### **1615.905 Profit analysis factors.**

(a) OPM contracting officers will apply a weighted guidelines method in developing the service charge prenegotiation objective for FEHBP contracts. The following factors as defined in FAR 15.905-1 will be applied to projected incurred claims and allowable administrative expenses:

(1) *Contractor performance.* OPM will consider such elements as the accurate and timely processing of benefit claims and the volume and validity of disputed claims as measures of economical and efficient contract performance. This factor will be judged apart from the contractor's *basic* responsibility for contract performance and will be a measure of the extent and nature of the contractor's contribution to the FEHBP through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a negative weight. Innovations of benefit to the FEHBP generally a plus weight, documented inattention or indifference to cost control a negative weight.

(2) *Contract cost risk.* OPM will consider such underwriting elements as the availability of margins, group size, enrollment demographics and fluctuation, and the probability of conversion and adverse selection, as well as the extent of financial assistance the carrier renders to the contract, in assessing

the degree of cost responsibility and associated risk assumed by the contractor as a factor in negotiating profit. It should be noted that the “loss carry forward basis” of experience rated group insurance practices limits this factor in an overall determination of profit. This factor is intended to provide profit opportunities commensurate with the contractor’s share of cost risks only, taking into account such elements as the adequacy and reliability of data for estimating costs, etc., offset by the “loss carry forward basis” of experience rating.

(3) *Federal socioeconomic programs.* OPM will consider documented evidence of successful, contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents, and other concerns of the type enumerated in FAR 15.905–1(c) as a factor in negotiating profit. This factor will be related to the quality of the contractor’s policies and procedures and the extent of unusual effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will receive a plus weight; poor support will receive a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEHBP contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor shall be given a weight of zero. However, special purpose facilities or investments costs of direct benefit to the FEHBP that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* OPM will consider contractor-initiated efforts such as improved benefit design, cost-sharing features, innovative peer review, or other professional cost containment efforts as a factor in negotiating profit. This factor shall be used to reward contractors with additional profit opportunities for self-initiated efforts to control contract costs.

(6) *Independent development.* OPM will consider any profit opportunities that may be directly related to relevant independent efforts such as the development of a unique and enhanced customer support system that is of dem-

onstrated value to the FEHBP and for which developmental costs have not been recovered directly or indirectly through allowable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the contractor’s investment and risk in developing techniques, methods, practices, etc., having viability to the program at large. Improvements and innovations recognized and rewarded under any of the other profit factors cannot be considered.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth below:

Profit factor	Weight ranges (percent)
1. Contractor performance ....	– .2 to +.45.
2. Contract cost risk* .....	+.02 to +.2.
3. Federal socioeconomic programs.	– .05 to +.05.
4. Capital investments .....	0 to +.02.
5. Cost control .....	0 to +.35.
6. Independent development	0 to +.03.

\*The contract cost risk factor is subdivided into two parts: group size (.02 to .10) and other risk elements (0 to .10). With respect to the group size element, subweights should be assigned as follows:

Enrollment	Weight (percent)
10,000 or less .....	.06 to .10.
10,001–50,000 .....	.05 to .09.
50,001–200,000 .....	.04 to .07.
200,001–500,000 .....	.03 to .06.
500,001 and over .....	.02 to .04.

## PART 1616—TYPES OF CONTRACTS

### Subpart 1616.1—Selecting Contract Types

Sec.

1616.102 Policies.

1616.105 Solicitation provision.

### Subpart 1616.2—Fixed-Price Contracts

1616.270 Clause—contracts based on established market price (community rate).

1616.271 Clause—contracts based on cost analysis (experience rate).

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1616 appear at 55 FR 27415, July 2, 1990.

**Subpart 1616.1—Selecting  
Contract Types**

**1616.102 Policies.**

(a) FEHBP contracts in which benefits provided and subscription income are based on community rating (i.e., established market price) shall be negotiated fixed-price contracts with economic price adjustments.

(b) FEHBP contracts in which benefits provided and subscription income are based on experience rating shall be a combination of negotiated fixed-price contracts with provisions for a form of retroactive price redetermination.

**1616.105 Solicitation provision.**

FAR 16.105 has no practical application because the statutory provisions

of 5 U.S.C. chapter 89 obviate the issuance of solicitations.

**Subpart 1616.2—Fixed-Price  
Contracts**

**1616.270 Clause—contracts based on  
established market price (commu-  
nity rate).**

The clause at 1652.216-70 shall be inserted in all FEHBP contracts based on established market price.

**1616.271 Clause—contracts based on  
cost analysis (experience rate).**

The clause at 1652.216-71 shall be inserted in all FEHBP contracts based on cost analysis.

**SUBCHAPTER D—SOCIOECONOMIC PROGRAMS****PART 1622—APPLICATION OF  
LABOR LAWS TO GOVERNMENT  
ACQUISITIONS****Subpart 1622.1—Basic Labor  
Policies**

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

**1622.103-70 Contract clause.**

The clause at 1652.222-70 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

**PART 1624—PROTECTION OF PRI-  
VACY AND FREEDOM OF INFOR-  
MATION****Subpart 1624.1—Protection of  
Individual Privacy**

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

**1624.104 Contract clause.**

Records retained by FEHBP carriers on Federal subscribers and members of their families serve the carriers' own commercial function of paying health benefits claims and are not maintained to accomplish an agency function of OPM. Consequently, the records do not fall within the provisions of the Privacy Act. Nevertheless, OPM recognizes the need for carriers to keep certain records confidential. The clause at 1652.224-70 shall be inserted in all FEHBP contracts.

[52 FR 16041, May 1, 1987]

## SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

### PART 1631—CONTRACT COST PRINCIPLES AND PROCEDURES

#### Subpart 1631.2—Contracts With Commercial Organizations

Sec.

- 1631.200 Scope of subpart.
- 1631.201-70 FEHBP credits.
- 1631.203-70 FEHBP General and Administrative (G&A) expenses.
- 1631.205 Selected costs.
- 1631.205-41 Taxes.
- 1631.205-70 FEHBP public relations and advertising costs.
- 1631.205-71 FEHBP bad debts.
- 1631.205-72 FEHBP compensation for personal services.
- 1631.205-73 FEHBP interest expense.
- 1631.205-74 FEHBP losses on other contracts.
- 1631.205-75 Selling costs.
- 1631.205-76 Trade, business, technical and professional activity costs.
- 1631.205-77 FEHBP start-up and other non-recurring costs.
- 1631.205-78 FEHBP printed material costs.
- 1631.205-79 Mandatory statutory reserves.
- 1631.205-80 Major subcontractor service charges.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16041, May 1, 1987, unless otherwise noted.

#### Subpart 1631.2—Contracts With Commercial Organizations

##### 1631.200 Scope of subpart.

The cost principles under this subpart apply only to contracts in which premiums and subscription income are determined on the basis of experience rating, in which cost analysis is performed, or in which price is determined on the basis of actual costs incurred.

##### 1631.201-70 FEHBP credits.

The provisions of FAR 31.201-5 shall apply to income, rebates, allowances, and other credits resulting from benefit payments that include, but are not limited to—

- (a) Coordination of benefit refunds;
- (b) Hospital year-end settlements;
- (c) Uncashed and returned checks;
- (d) Utilization review refunds;

(e) Refunds attributable to litigation with subscribers or providers of health services; and

(f) Erroneous benefit payment, overpayment, and duplicate payment recoveries.

##### 1631.203-70 FEHBP General and Administrative (G&A) expenses.

The provisions of FAR 31.203 apply to the allocation of indirect costs by means of a “dividend or retention formula.”

##### 1631.205 Selected costs.

##### 1631.205-41 Taxes.

5 U.S.C. 8909(f)(1) prohibits the imposition of taxes, fees, or other monetary payment, directly or indirectly, on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities. Therefore, FAR 31.205-41 is modified to include those taxes as unallowable costs. The prohibited payments, referred to elsewhere in these regulations as “premium taxes,” applies to all payments directed by States or municipalities, regardless of how they may be titled, to whom they must be paid, or the purpose for which they are collected, and it applies to all forms of direct and indirect measurements on FEHBP premiums, however modified, to include cost per contract or enrollee, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

[56 FR 57496, Nov. 12, 1991]

##### 1631.205-70 FEHBP public relations and advertising costs.

(a) The cost of media messages that are directed at advising current FEHBP subscribers on how to obtain benefits shall be an allowable expense within the meaning of FAR 31.205-1 because this service is directly related to performance of the FEHBP contract. If there is any question about the allowability of such a cost, the carrier may

request advance approval regarding the content and cost of the message.

(b) Costs of media messages not provided for in paragraph (a) of this section are allowable if the content is specifically approved by the contracting officer and all of the following criteria are met:

(1) The primary effect of the message is to disseminate information on health care cost containment or preventive health care;

(2) The costs of the carrier's messages are allocated to all underwritten and non-underwritten lines of business; and

(3) The contracting officer approves the total dollar amount of the carrier's messages to be charged to the FEHBP in advance of the contract year.

(c) Costs of messages that are intended to, or which have the primary effect of, calling favorable attention to the carrier (or subcontractor) for the purpose of enhancing its overall image or selling its health plan are not allowable.

#### **1631.205-71 FEHBP bad debts.**

Erroneous benefit payments are not automatically disallowed by FAR 31.205-3.

#### **1631.205-72 FEHBP compensation for personal services.**

Overtime on an FEHBP contract would normally meet the condition specified in FAR 22.103. Premiums for overtime, extra-pay shifts, and multi-shifts meeting the specified conditions shall be allowed without prior approval.

#### **1631.205-73 FEHBP interest expense.**

(a) Interest charges incurred in the administration of FEHBP contracts are not allowable in accordance with FAR 31.205-20. However, interest charges that are associated with the carrier's investment of FEHBP account funds are not considered administrative costs and may be allowable under very limited circumstances if all of the following criteria are met:

(1) Borrowing is limited to the positive balance of the carrier's entire FEHBP investment portfolio;

(2) FEHBP funds are tied up in long-term securities;

(3) Liquidation of long-term securities would cost more than the cost of the interest;

(4) The interest rates charged are at or below current market rates; and

(5) Advance written approval of the contracting officer is obtained before such costs are incurred.

(b) The carrier must demonstrate on a case-by-case basis that borrowing rather than cashing in long-term investments shall actually result in cost savings to the FEHB Program. Satisfactory demonstration of cost savings is a prerequisite to contracting officer approval of the interest cost as a charge to the contract.

(c) If the interest charge is allowed, the risk factor in the service charge will be adjusted downward so that the carrier does not recover interest costs through both the service charge and an allowance under this paragraph.

#### **1631.205-74 FEHBP losses on other contracts.**

FAR 31.205-23 shall not be construed to prohibit the application of the normal "loss carry forward" principle that is fundamental to continuing insurance contracts that are based on experience rating.

#### **1631.205-75 Selling costs.**

(a) FAR 31.205-38 is modified to eliminate from allowable costs those costs related to sales promotion and the payment of sales commissions fees or salaries to employees or outside commercial or selling agencies for enrolling Federal subscribers in a particular FEHB plan.

(b) Selling costs are allowable costs to FEHBP contracts to the extent that they are necessary for conducting annual contract negotiations with the Government and for liaison activities necessary for ongoing contract administration. Personnel and related travel costs are allowable for attendance at Open Season health fairs and other similar activities sponsored by Government agencies (but see FAR 31.205-1 "Public relations and advertising costs", and Federal Personnel Manual Supplement 890-1, Subchapter S2-3(f) "Controlling contacts between employees and carriers").

**1631.205-76 Trade, business, technical, and professional activity costs.**

(a) FEHBP participating plans, carriers, and underwriters shall seek the advance written approval of the contracting officer for allowability of all or part of the costs associated with trade, business, technical, and professional activities (FAR 31.205-43) when the allocable costs of such participation to the FEHBP will exceed \$1,000 annually and when the carrier or underwriter allocates more than 50% of the membership cost of a trade, business, technical, or professional organization to the FEHBP.

(b) When approval of costs for membership in an organization is required, the carrier or underwriter must demonstrate conclusively that membership in such an organization and participation in its activities extend beyond the contractual relationship with OPM, have a reasonable relationship to providing care and services to FEHBP enrollees, and that the organization is not engaged in activities such as those cited in FAR 31.205-22 (lobbying costs) for which costs are not allowable.

**1631.205-77 FEHBP start-up and other nonrecurring costs.**

Precontract costs (FAR 31.205-32) shall be allowed only to the extent provided for by advance agreement in accordance with FAR 31.109.

**1631.205-78 FEHBP printed material costs.**

Unless OPM determines that it is in the best interest of the FEHBP to do otherwise, if a carrier orders printed material that is available from the Government Printing Office (GPO) under the "rider system" from another source, the allowable contract charges shall be the lesser of the amount actually paid or the cost that would have been incurred had the carrier ridden OPM's GPO order.

**1631.205-79 Mandatory statutory reserves.**

Charges for mandatory statutory reserves are not allowed unless provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition

or explanation, it means a requirement imposed by State law upon the carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the carrier, a pro rata share based upon FEHBP's contribution to the total carrier's set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

**1631.205-80 Major subcontractor service charges.**

In a subcontract for enrollment and eligibility determinations, administration of claims and payment of benefits, and payment or provision of actual health services, and/or assumption of insurance risk or underwriting, when costs are determined on the basis of actual costs incurred or experience rating, any amount that exceeds the allowable cost of the subcontract (whether entitled service charge, profit, fee, contribution to reserve, surplus, or any other title) is not allowable under the contract. Amounts which exceed allowable costs may be paid to a major subcontractor only from the service charge negotiated between OPM and the Carrier.

**PART 1632—CONTRACT FINANCING****Subpart 1632.1—General**

Sec.

1632.170 Recurring premium payments to carriers.

1632.171 Clause—community-rated contracts.

1632.172 Clause—experience-rated contracts.

**Subpart 1632.6—Contract Debts**

1632.607 Tax credit.

1632.617 Contract clause.

## 1632.170

### Subpart 1632.7—Contract Funding

- 1632.770 Contingency reserve payments.  
1632.771 Non-commingling of FEHBP funds.  
1632.772 Contract clause.

### Subpart 1632.8—Assignment of Claims

- 1632.806–70 Contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

### Subpart 1632.1—General

#### 1632.170 Recurring premium payments to carriers.

(a) *Recurring payments to carriers of community-rated plans.* OPM will pay to carriers of community-rated plans the premium payments received for the plan less the amounts credited to the contingency and administrative reserves. Premium payments will be due and payable not later than 30 days after receipt by the Federal Employees Health Benefits (FEHB) Fund.

(b)(1) *Recurring payments to carriers of experience-rated plans.* OPM will make payments on a letter of credit (LOC) basis. Premium payments received for the plan, less the amounts credited to the contingency and administrative reserves, will be made available for carrier drawdown not later than 30 days after receipt by the FEHB Fund. In addition, contingency reserve and interest distribution payments will be made available for carrier drawdown from the LOC account. Carriers will use the LOC account in accordance with guidelines issued by OPM.

(2) Withdrawals from the LOC account will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEHB Program disbursements are presented to the carrier's bank for payment.

(3) OPM may grant a waiver of the restriction of LOC disbursements to a checks-presented basis if the carrier requests the waiver in writing and demonstrates to OPM's satisfaction that the checks-presented basis of LOC disbursements will result in significantly increased liability under the contract, or that the checks-presented basis of LOC disbursements is otherwise clearly

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and significantly detrimental to the operation of the plan. Payments to carriers that have been granted a waiver may be made by an alternative payment methodology, subject to OPM approval.

[57 FR 14360, Apr. 20, 1992]

#### 1632.171 Clause—community-rated contracts.

The clause at 1652.232–70 shall be inserted in all community-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

#### 1632.172 Clause—experience-rated contracts.

The clause at 1652.232–71 shall be inserted in all experience-rated FEHBP contracts.

[57 FR 14360, Apr. 20, 1992]

### Subpart 1632.6—Contract Debts

#### 1632.607 Tax credit.

FAR 32.607 has no practical application to FEHBP contracts. The statutory provisions at 5 U.S.C. 8906(c) and (d) authorize joint enrollee and Government contributions to the FEHBP Fund. Because the Fund is comprised of contributions by enrollees as well as the Government, carriers may not offset debts to the Fund by a tax credit which is solely a Government obligation.

#### 1632.617 Contract clause.

The clause at (FAR) 48 CFR 52.232–17 will be modified in all FEHBP contracts to exclude the words “net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481).”

[59 FR 14765, Mar. 30, 1994]

### Subpart 1632.7—Contract Funding

#### 1632.770 Contingency reserve payments.

(a) Payments from the contingency reserve shall be made in accordance with 5 CFR 890.503.

(b) A carrier for an FEHB plan may apply to OPM at any time for a payment from the contingency reserve that is in addition to those amounts, if any, paid under 5 CFR 890.503(c)(1)



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through (c)(4), if the carrier can show good cause, such as, unexpected adverse claims experience. OPM will decide whether to allow the request in whole or in part and will advise the carrier of its decision. However, OPM shall not unreasonably withhold approval for amounts requested that exceed the plan's preferred minimum balance for the contingency reserve.

### **1632.771 Non-commingling of FEHBP funds.**

(a) This section applies to contracts based on cost analysis.

(b) Carrier or underwriter commingling of FEHBP funds with those from other sources makes it difficult to precisely determine FEHBP cash balances at any given time or to precisely determine investment income attributable to FEHBP invested assets.

(c) FEHBP funds shall be maintained separately from other cash and investments of the carrier or underwriter. Cash and investment balances reported on FEHBP Annual Accounting Statements must agree with the carrier's books and records.

(d) This requirement may be waived by the contracting officer in accordance with the clause at 1652.232-70 when adequate accounting and other controls are in effect. If the requirement is waived, the waiver will remain in effect until it is withdrawn by OPM. The

waiver shall be withdrawn if OPM determines that the accounting controls are no longer adequate to properly account for FEHBP funds.

### **1632.772 Contract clause.**

The clause at 1652.232-70 shall be included in all contracts that are based on cost analysis.

## **Subpart 1632.8—Assignment of Claims**

### **1632.806-70 Contract clause.**

The clause set forth in 1652.232-73 shall be inserted in all FEHBP contracts.

[55 FR 27415, July 2, 1990]

## **PART 1633—PROTESTS, DISPUTES, AND APPEALS**

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### **1633.070 Designation of the Board of Contract Appeals.**

The Armed Services Board of Contract Appeals (ASBCA) serves as the Board of Contract Appeals for the FEHBP. The rules of procedure followed in a dispute shall be those prescribed by the ASBCA.

[52 FR 16043, May 1, 1987]

## SUBCHAPTER G—CONTRACT MANAGEMENT

### PART 1642—CONTRACT ADMINISTRATION

#### Subpart 1642.12—Novation and Change-of-Name Agreements

Sec.

1642.1201 Definitions.

1642.1204 Agreement to recognize a successor in interest (novation agreement).

1642.1205 Agreement to recognize carrier's change of name.

#### Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

1642.7001 Management agreement.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 59 FR 14765, Mar. 30, 1994, unless otherwise noted.

#### Subpart 1642.12—Novation and Change-of-Name Agreements

##### 1642.1201 Definitions.

The definitions at (FAR) 48 CFR 42.1201 shall have the same meaning for this subpart.

##### 1642.1204 Agreement to recognize a successor in interest (novation agreement).

(a) (FAR) 48 CFR 42.1204 shall be implemented as provided in this section. The contracting officer shall insert the following agreement in all FEHBP contracts for use when the contractor's assets or the entire portion of the assets pertinent to the performance of the contract, as determined by the Government, are transferred.

##### NOVATION AGREEMENT

The *(insert corporate name)* (Transferor), a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city, state)*; the *(insert corporate name)* (Transferee), (if appropriate add "formerly known as the \_\_\_\_\_ Corporation") a corporation duly organized and existing under the laws of *(insert State)* with its principal office in *(insert city)*; and the UNITED STATES OF AMERICA (Government) enter into this Agreement effective *(insert date transfer of assets became effective under applicable State law)*.

(a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number \_\_\_\_\_ with the Transferor. The term *contracts*, as used in this Agreement, means the contract cited in this paragraph and all other contracts and purchase orders, including any and all amendments and modifications made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) As of \_\_\_\_ 19\_\_ (insert date transfer of assets became effective under applicable State law), the Transferor has transferred to the Transferee all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of a(an) *(insert term describing the legal transaction involved)* between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor, or the entire portion of the Transferor's assets pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(4) The Transferee has assumed all obligations and liabilities of the Transferor pertinent to performing the contract, as determined by OPM, by virtue of the transfer in paragraph (a)(1).

(5) The Transferee is in a position to fully perform all obligations that may exist under the contract.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contract.

(7) Evidence of the transfer in paragraph (a)(1) has been filed with the Government.

(8) [If applicable:] A certificate dated \_\_\_\_, 19\_\_, signed by the Secretary of State of *(insert State)*, to the effect that the corporate name of *(insert old corporate name)* was changed to *(insert new corporate name)* on \_\_\_\_, 19\_\_, has been filed with the Government.

(b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT BY THIS AGREEMENT—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government or the Federal Employees Health Benefits Fund that it now has or may have in the future in connection with the contract.

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(2) The Transferee agrees to be bound by and to perform the contract in accordance with the conditions contained in the contract. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor pertinent to the contract, as determined by OPM, as if the Transferee were the original party to the contract.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contract, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contract. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contract as if the Transferee were the original party to the contract. Following the effective date of this Agreement, the terms *Carrier* and *Contractor* as used in the contract, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contract, shall be considered to have discharged those parts of the Government's obligations under the contract. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contract, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contract.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee (i) assumes under this Agreement or (ii) may undertake in the future should this contract be modified under its terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contract shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement effective (*insert the date transfer of as-*

*sets became effective under applicable State law*).

UNITED STATES OF AMERICA,

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

(Enter Transferor's name)

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

(Enter Transferee's name)

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of (*insert name of Transferor*); that \_\_\_\_\_, who signed this Agreement for this corporation, was then \_\_\_\_\_ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

By \_\_\_\_\_

(Corporate Seal)

CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of (*insert name of Transferee*); that \_\_\_\_\_, who signed this Agreement for this corporation, was then \_\_\_\_\_ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

By \_\_\_\_\_

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Novation Agreement in a timely manner shall be cause for termination of the contract by OPM in accordance with FEHBAR 1652.249-70.

(c) The Contracting Officer shall terminate the contract if it is determined not to be in the Government's interest to recognize a successor in interest to the contract. The effective date will be decided by the Contracting Officer after considering the best interests of FEHBP enrollees.

**1642.1205 Agreement to recognize carrier's change of name.**

(a) (FAR) 42.1205 shall be implemented as provided in this section. The

Contracting Officer shall insert the following Agreement in all FEHBP contracts for use when the carrier changes its name and the Government's and contractor's rights and obligations remain unaffected.

## CHANGE-OF-NAME AGREEMENT

The (insert new Carrier name), a corporation duly organized and existing under the laws of (insert State), and the UNITED STATES OF AMERICA (Government), enter into this Agreement effective (insert date when the change of name became effective under applicable State law).

## (a) THE PARTIES AGREE TO THE FOLLOWING FACTS:

(1) The Government, represented by various Contracting Officers of the Office of Personnel Management (OPM), has entered into Contract Number \_\_\_\_\_ with the (insert old Carrier name). The term *contracts* as used in this Agreement means the contract cited in this paragraph and all other contracts and purchase orders and all modifications thereto made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the OPM or the Carrier has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The (insert old Carrier name), by an amendment to its certificate of incorporation, dated \_\_\_\_, 19\_\_, has changed its corporate name to (insert new Carrier name).

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and the Carrier under the contract are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

## (b) IN CONSIDERATION OF THESE FACTS, THE PARTIES AGREE THAT:

(1) The contract is amended by substituting the name “ (insert new Carrier name)” for the name “(insert old Carrier name)” wherever it appears in the contract; and

(2) Each party has executed this Agreement effective the day and year stated in paragraph (a)(2).

UNITED STATES OF AMERICA,

\_\_\_\_\_, Date \_\_\_\_\_

Title \_\_\_\_\_

(Enter new Carrier name)

By \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

## CERTIFICATE

I, \_\_\_\_\_, certify that I am the Secretary of (insert new Carrier name); that \_\_\_\_\_, who signed this Agreement for this corporation,

was then (insert position held) of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.

Witness my hand and the seal of this corporation this \_\_\_\_ day of \_\_\_\_ 19\_\_.

By \_\_\_\_\_

(Corporate Seal)

(End of Agreement)

(b) Failure to submit the properly completed and signed Change-of-Name Agreement in a timely manner may be cause for termination of the contract by OPM in accordance with FEHBP 1652.249-70.

### Subpart 1642.70—Management Agreement (in Lieu of Novation Agreement)

#### 1642.7001 Management agreement.

When it is in the best interest of FEHBP enrollees to continue a contract for an interim period after the carrier discontinues its operations and has entered into a Purchase and Sale Agreement (or other descriptive term), but before a successor in interest has been recognized by OPM, the carrier may submit for OPM approval a Management Agreement that enables it to continue a contract through an agreement with a third party to administer the day-to-day performance of the contract. Examples of situations in which a Management Agreement may be accepted by OPM are:

(a) When a transfer of assets does not meet the criteria for a novation;

(b) While a request for a novation is pending;

(c) While awaiting a decision on a request for a novation;

(d) As an interim measure, when the timing of a transfer of assets or the timing of a carrier's withdrawal make administration of the contract inconvenient;

(e) When it is not in the interests of the Government to either recognize a successor in interest or to immediately terminate the existing FEHBP contract.

## PART 1644—SUBCONTRACTING POLICIES AND PROCEDURES

### Subpart 1644.1—General

Sec.

1644.170 Policy for FEHBP subcontracting consent.

### Subpart 1644.2—Consent to Subcontracts

1644.270 FEHBP contract clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16043, May 1, 1987, unless otherwise noted.

### Subpart 1644.1—General

#### 1644.170 Policy for FEHBP subcontracting consent.

For all FEHBP contracts, advance approval shall be required on subcontracts or modifications to subcontracts when the amount charged the FEHBP contract exceeds \$100,000.

### Subpart 1644.2—Consent to Subcontracts

#### 1644.270 FEHBP contract clause.

The clause set forth at 1652.244-70 shall be inserted in all FEHBP contracts.

## PART 1646—QUALITY ASSURANCE

### Subpart 1646.2—Contract Quality Requirements

Sec.

1646.270 General.

### Subpart 1646.3—Contract Clauses

1646.301 Contractor inspection requirements.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

### Subpart 1646.2—Contract Quality Requirements

#### 1646.270 General.

(a) This section prescribes general policies and procedures to ensure that services acquired under the FEHBP contract conform to the contract's quality requirements.

(b) OPM shall periodically evaluate the contractor's system of internal controls under the quality assurance program required by the contract and will acknowledge in writing whether or not the system is consistent with the requirements set forth in the contract. After the initial review, subsequent reviews may be limited to changes in the contractor's internal control guidelines. However, a limited review does not diminish the contractor's obligation to apply the full internal control system.

(c) OPM will issue specific performance standards for the FEHBP contracts and will inform carriers of the applicable performance standards prior to negotiations for the contract year. OPM will benchmark its standards against standards generally accepted in the insurance industry. The contracting officer may authorize nationally recognized standards to be used to fulfill this requirement.

(d) FEHBP carriers shall comply with the performance standards issued under paragraph (c) of this section.

[59 FR 14767, Mar. 30, 1994]

### Subpart 1646.3—Contract Clauses

#### 1646.301 Contractor inspection requirements.

The clause set forth at 1652.246-70 shall be inserted in all FEHBP contracts.

[52 FR 16044, May 1, 1987]

## PART 1649—TERMINATION OF CONTRACTS

Sec.

1649.002-70 Applicability of the FAR to FEHB acquisitions.

### Subpart 1649.1—General Principles

1649.101-70 FEHBP renewal and withdrawal of approval clause.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

#### 1649.002-70 Applicability of the FAR to FEHB acquisitions.

(a) Termination of FEHB contracts because of withdrawal of approval is

**1649.101-70**

controlled by 5 U.S.C. 8902(e) and 5 CFR 890.204.

(b) Termination of FEHB contracts because of nonrenewal of the contract at the end of the contract term is controlled by 5 U.S.C. 8902(a) and 5 CFR 890.205.

(c) The procedures for settlement of contracts after they are terminated

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shall be those contained in FAR part 49.

[57 FR 19387, May 6, 1992]

**Subpart 1649.1—General Principles**

**1649.101-70 FEHBP renewal and withdrawal of approval clause.**

The clause in 1652.249-70 shall be inserted in all FEHBP contracts.

## SUBCHAPTER H—CLAUSES AND FORMS

### PART 1652—CONTRACT CLAUSES

#### Subpart 1652.2—Texts of FEHBP Clauses

- 1652.203-70 Misleading, deceptive, or unfair advertising.
- 1652.204-70 Contractor records retention.
- 1652.204-71 Coordination of Benefits.
- 1652.204-72 Filing health benefit claims/court review of disputed claims.
- 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.
- 1652.215-71 Investment Income.
- 1652.216-70 Accounting and price adjustment.
- 1652.216-71 Accounting and Allowable Cost.
- 1652.222-70 Notice of significant events.
- 1652.224-70 Confidentiality of Records.
- 1652.232-70 Payments—community-rated contracts.
- 1652.232-71 Payments—experience-rated contracts.
- 1652.232-72 Non-commingling of FEHBP funds.
- 1652.232-73 Approval for the Assignment of Claims.
- 1652.244-70 Subcontracts.
- 1652.246-70 FEHB Inspection.
- 1652.249-70 Renewal and withdrawal of approval.

#### Subpart 1652.3—FEHBP Clause Matrix

- 1652.370 Use of the matrix.

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 52 FR 16044, May 1, 1987, unless otherwise noted.

#### 1652.000 Applicable clauses.

The clauses of subpart 52.2 specified below shall be applicable to FEHBP acquisitions.

##### SECTION AND CLAUSE TITLE

- 52.202-1 Definitions (Apr. 1984).
- 52.203-1 Officials not to Benefit (Apr. 1984).
- 52.203-3 Gratuities (Apr. 1984).
- 52.203-5 Covenant Against Contingent Fees (Apr. 1984).
- 52.203-7 Anti-Kickback Procedures.
- 52.203-9 Requirement for Certificate of Procurement Integrity—Modification.
- 52.203-12 Limitation on Payments to Influence Certain Federal Transactions.
- 52.209-6 Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.
- 52.215-1 Examination of Records by Comptroller General (Apr. 1984).
- 52.215-2 Audit—Negotiation (Jan. 1987).
- 52.215-22 Price Reduction for Defective Cost or Pricing Data (Apr. 1984).
- 52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications (Apr. 1985).
- 52.215-24 Subcontractor Cost or Pricing Data (Apr. 1985).
- 52.215-25 Subcontractor Cost or Pricing Data—Modifications (Apr. 1985).
- 52.215-30 Facilities Capital Cost of Money (Apr. 1984).
- 52.215-31 Waiver of Facilities Capital Cost of Money (Apr. 1984).
- 52.219-8 Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (June 1985).
- 52.219-13 Utilization of Women-Owned Small Businesses (Aug. 1986).
- 52.220-3 Utilization of Labor Surplus Area Concerns (Apr. 1984).
- 52.222-3 Convict Labor (Apr. 1984).
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation—General (Mar. 1986).
- 52.222-26 Equal Opportunity (Apr. 1984).
- 52.222-28 Equal Opportunity Preaward Clearance of Subcontracts (Apr. 1984).
- 52.222-29 Notification of Visa Denial (Apr. 1984).
- 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (Apr. 1984).
- 52.222-36 Affirmative Action for Handicapped Workers (Apr. 1984).
- 52.223-2 Clean Air and Water (Apr. 1984).
- 52.223-6 Drug-Free Workplace.
- 52.229-3 Federal, State, and Local Taxes (Apr. 1984).
- 52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract) (Apr. 1984).
- 52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico (Apr. 1984).
- 52.229-6 Taxes—Foreign Fixed-Price Contracts (Apr. 1984).
- 52.230-2 Cost Accounting Standards.
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices.
- 52.230-5 Administration of Cost Accounting Standards.
- 52.230-6 Consistency in Cost Accounting Practices (Apr. 1984).
- 52.232-1; 1632.111 Payments (Jan. 1987).
- 52.232-8 Discounts for Prompt Payment (July 1985).
- 52.232-11 Extras (Apr. 1984).
- 52.232-17; 1632.617 Interest (Jan. 1987).

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- 52.232-23 Assignment of Claims (Jan. 1986).
- 52.232-24 Prohibition of Assignment of Claims (Jan. 1986).
- 52.233-1 Disputes (Apr. 1984).
- 52.242-1 Notice of Intent to Disallow Costs (Apr. 1984).
- 52.242-13 Bankruptcy.
- 52.243-1 Changes—Fixed Price—Alternate I (Apr. 1984).
- 52.244-5 Competition in Subcontracting (Apr. 1984).
- 52.245-2 Government Property (Fixed-Price Contracts) (Apr. 1984).
- 52.246-25 Limitation of Liability—Services (Apr. 1984).
- 52.247-63 Preference for U.S.-Flag Air Carriers (Apr. 1984).
- 52.249-2 Termination for Convenience of the Government (Fixed-Price).
- 52.249-8 Default (Fixed-Price Supply and Service).
- 52.251-1 Government Supply Sources (Apr. 1984).
- 52.252-2 Clauses Incorporated by Reference (Apr. 1984).
- 52.252-4 Alterations in Contract (Apr. 1984).
- 52.252-6 Authorized Deviations in Clauses (Apr. 1984).

[52 FR 16044, May 1, 1987, as amended at 59 FR 14767, Mar. 30, 1994]

### Subpart 1652.2—Texts of FEHBP Clauses

#### 1652.203-70 Misleading, deceptive, or unfair advertising.

As prescribed in 1603.703, the following clause shall be inserted in all FEHBP contracts:

##### MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (JAN 1991)

(a) The Carrier agrees that any advertising material, including that labeled promotional material, marketing material, or supplemental literature, shall be truthful and not misleading.

(b) Criteria to assess compliance with paragraph (a) of this clause are available in the FEHB Supplemental Literature Guidelines which are developed by OPM and should be used, along with the additional guidelines set forth in FEHBP 1603.702, as the primary guide in preparing material; further guidance is provided in the NAIC "Rules Governing Advertising of Accident and Sickness Insurance With Interpretive Guidelines." Guidelines are periodically updated and provided to the Carrier by OPM.

(c) Failure to conform to paragraph (a) of this clause may result in a reduction in the service charge, if appropriate, and corrective action to protect the interest of Federal Members. Corrective action will be appropriate to the circumstances and may include,

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but is not limited to the following actions by OPM:

(1) Directing the Carrier to cease and desist distribution, publication, or broadcast of the material;

(2) Directing the Carrier to issue corrections at the Carrier's expense and in the same manner and media as the original material was made; and

(3) Directing the Carrier to provide, at the Carrier's expense, the correction in writing by certified mail to all enrollees of the Plan(s) that had been the subject of the original material.

(d) Egregious or repeated offenses may result in the following action by OPM:

(1) Suspending new enrollments in the Carrier's Plan(s);

(2) Providing Enrollees an opportunity to transfer to another plan; and

(3) Terminating the contract in accordance with Section 1.15, Renewal and Withdrawal of Approval.

(e) Prior to taking action as described in paragraphs (c) and (d) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(f) The Carrier shall incorporate this clause in subcontracts with its underwriter, if any, and other subcontractors directly involved in the preparation or distribution of such advertising material and shall substitute "Contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

[55 FR 27415, July 2, 1990]

#### 1652.204-70 Contractor records retention.

As prescribed in 1604.705, the following clause shall be inserted in all FEHBP contracts.

##### CONTRACTOR RECORDS RETENTION (JAN 1991)

Notwithstanding the provisions of section 5.7 (FAR 52.215-2(d)) "Audit-Negotiation" and the SF 1412, the Carrier will retain and make available all records applicable to a contract term that support the annual statement of operations and the rate submission for that contract term for a period of 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27415, July 2, 1990]



**1652.204-71 Coordination of Benefits.**

As prescribed in 1604.7001, the following clause shall be inserted in all FEHBP contracts:

## COORDINATION OF BENEFITS (JAN 1991)

(a) The Carrier shall coordinate the payment of benefits under this contract with the payment of benefits under Medicare, other group health benefits coverages, and the payment of medical and hospital costs under no-fault or other automobile insurance that pays benefits without regard to fault.

(b) The Carrier shall not pay benefits under this contract until it has determined whether it is the primary carrier or unless permitted to do so by the Contracting Officer.

(c) In coordinating benefits between plans, the Carrier shall follow the order of precedence established by the NAIC Model Guidelines for Coordination of Benefits (COB) as specified by OPM.

(d) Where (1) the Carrier makes payments under this contract which are subject to COB provisions; (2) the payments are erroneous, not in accordance with the terms of the contract, or in excess of the limitations applicable under this contract; and (3) the Carrier is unable to recover such COB overpayments from the Member or the providers of services or supplies, the Contracting Officer may allow such amounts to be charged to the contract; the Carrier must be prepared to demonstrate that it has made a diligent effort to recover such COB overpayments.

(e) COB savings shall be reported by experience rated carriers each year along with the Carrier's annual accounting statement in a form specified by OPM.

(f) Changes in the order of precedence established by the NAIC Model Guidelines implemented after January 1 of any given year shall be required no earlier than the beginning of the following contract term.

(End of Clause)

[55 FR 27415, July 2, 1990]

**§ 1652.204-72 Filing health benefit claims/court review of disputed claims.**

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

## FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS

(a) *General.* (1) The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial.

If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM review processes specified in this clause before seeking judicial review of the denied claim.

(2) This clause applies to covered individuals and to other individuals or entities who are acting on the behalf of a covered individual and who have the covered individual's specific written consent to pursue payment of the disputed claim.

(b) Time limits for reconsidering a claim.

(1) The covered individual has 6 months from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier. The time limit for requesting reconsideration may be extended when the covered individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within the time limit set forth in this paragraph.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within the time limit set forth in paragraph (b)(2) of this clause. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented

by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

- (i) Specifically identify the information needed;
- (ii) State the reason the information is required to make a decision on the claim;
- (iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and
- (iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

- (1) The specific and detailed reasons for the denial;
- (2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

- (i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or
- (ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or
- (iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may:

- (i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

- (i) Give a written notice of its decision to the covered individual and the Carrier; or
- (ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) OPM, upon its own motion, may reopen its review if it receives evidence that was unavailable at the time of its original decision.

(g) *Court review.* (1) A suit to compel enrollment under §890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM and not against the Carrier or the Carrier's subcontractors. The recovery in such a suit shall be limited to a court order directing OPM to require the Carrier to pay the amount of benefits in dispute.

(4) An action under paragraph (3) of this clause to recover on a claim for health benefits:

- (i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (f) of this clause;
- (ii) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and
- (iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of Clause)

[61 FR 15198, Apr. 5, 1996]

**1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.**

As prescribed in 1615.804-72, the following clause shall be inserted in contracts based on established market price:

**RATE REDUCTION FOR DEFECTIVE PRICING OR DEFECTIVE COST OR PRICING DATA (OCT 1994)**

If any rate established in connection with this contract was increased because (1) the Carrier furnished cost or pricing data that were not complete, accurate, or current as certified in the Certificate of Accurate Pricing for Community Rated Plans (FEHBP 1615.804-70); (2) the Carrier furnished pricing data that were not accurate as represented on the Claim for Exemption from Submission of Certified Cost or Pricing Data (SF 1412); (3) the Carrier developed FEHBP rates with a rating methodology and structure inconsistent with that used to develop rates for similarly sized subscriber groups (see FEHBP 1602.170-11) as certified in the Certificate of Accurate Pricing for Community Rated Plans or represented in the Supplemental Representation for SF 1412; or (4) the Carrier furnished data or information of any description that were not complete, accurate, and current—then, the rate shall be reduced in the amount by which the price was increased because of the defective data or information. When the Contracting Office determines that the Carrier did not charge a market price and the Government is entitled to a refund, the refund shall bear simple interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

[55 FR 27415, July 2, 1990, as amended at 59 FR 62346, Dec. 5, 1994]

**1652.215-71 Investment Income.**

As prescribed in 1615.805-71, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

**INVESTMENT INCOME (JAN 1991)**

(a) The Carrier shall invest and reinvest all FEHB funds on hand that are in excess of the funds needed to promptly discharge the obligations incurred under this contract. The Carrier shall seek to maximize investment

income with prudent consideration to the safety and liquidity of investments.

(b) All investment income earned on FEHB funds shall be credited to the Special Reserve on behalf of the FEHBP.

(c) When the Contracting Officer concludes that the Carrier failed to comply with paragraph (a) or (b) of this clause, the Carrier shall credit the Special Reserve with investment income that would have been earned, at the rate(s) specified in paragraph (f) of this clause, had it not been for the Carrier's noncompliance. "Failed to comply with paragraph (a) or (b)" means: (1) Making any charges against the contract which are not allowable, allocable, or reasonable; or (2) failing to credit any income due the contract and/or failing to place excess funds, including subscription income and payments from OPM not needed to discharge promptly the obligations incurred under the contract, refunds, credits, payments, deposits, investment income earned, uncashed checks, or other amounts owed the Special Reserve, in income producing investments and accounts.

(d) Investment income lost as a result of unallowable, unallocable, or unreasonable charges against the contract shall be paid from the 1st day of the contract term following the contract term in which the unallowable charge was made and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(e) Investment income lost as a result of failure to credit income due the contract or failure to place excess funds in income producing investments and accounts shall be paid from the date the funds should have been invested or appropriate income was not credited and shall end on the earlier of: (1) The date the amounts are returned to the Special Reserve (or the Office of Personnel Management); (2) the date specified by the Contracting Officer; or, (3) the date of the Contracting Officer's Final Decision.

(f) The Carrier shall credit the Special Reserve for income due in accordance with this clause. All amounts payable shall bear lost investment income compounded semiannually at the rate established by the Secretary of the Treasury as provided in section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraphs (d) and (e) of this clause. Thereafter, the rate shall be the rate applicable for each 6-month period as fixed by the Secretary until the amount is paid.

(g) The Carrier shall incorporate this clause into agreements with underwriters of the Carrier's FEHB plan and shall substitute "underwriter" or other appropriate reference for the term "Carrier."

**1652.216-70**

(End of Clause)

[55 FR 27416, July 2, 1990]

**1652.216-70 Accounting and price adjustment.**

As prescribed in 1616.270, the following clause shall be inserted in all FEHBP contracts based on established market price:

## ACCOUNTING AND PRICE ADJUSTMENT (JAN 1990)

(a) *Annual Accounting Statement.* The Carrier, not later than 90 days after the end of each contract period, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM.

(b) *Adjustment.* (1) This contract is community rated as defined in FEHBAR §1602.170-2.

(2) The subscription rates agreed to in this contract are derived from the market price, which is a per member per month (PMPM) capitation or its equivalent that applies to a combination of subscriber groups. The market price established in this contract may be an estimate of the Carrier's actual market price that will be in effect during the contract period.

(3) If, for the contract period, the Carrier establishes an actual market price higher than the market price established for this contract and the higher market price is actually paid by the similarly sized subscriber groups (see FEHBAR 1602.170-11), the Carrier may include an adjustment to the next contract period's FEHBP rates to recover the difference between the estimated market price and the actual market price.

(4) If for the contract period, the Carrier establishes an actual market price lower than the market price established for this contract and the lower market price is actually paid by similarly sized subscriber groups, the Carrier shall reimburse the Fund, for example, by reducing the next contract period's FEHB rates to reflect the difference between the estimated market price and the actual market price.

(5) No upward adjustment in the rate established for this contract will be allowed or considered by the Government or will be made by the Carrier in this or in any other contract period on the basis of actual costs incurred, actual benefits provided, or actual size or composition of the FEHBP group during this contract period.

(6) In the event this contract is not renewed, neither the Government nor the Carrier shall be entitled to any adjustment or claim for the difference between the estimated and the actual market price, PMPM capitation or revenue requirement.

**48 CFR Ch. 16 (10-1-96 Edition)**

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27416, July 2, 1990]

**1652.216-71 Accounting and Allowable Cost.**

As prescribed in 1616.271, the following clause shall be inserted in all FEHBP contracts based on cost analysis:

## ACCOUNTING AND ALLOWABLE COST (JAN 1991)

(a) *Annual Accounting Statement.* (1) The Carrier, not later than the date specified by the contract, shall furnish to OPM for that contract period an accounting of its operations under the contract. The accounting shall be in the form prescribed by OPM and shall include, among other things, a Balance Sheet and a Summary Statement of FEHBP Financial Operations. The Summary Statement of FEHBP Financial Operations shall include the following items for each option provided by the contract:

(i) Subscription income received and accrued (including amounts received from the Contingency Reserve);

(ii) Health benefits charges paid and accrued;

(iii) Administrative expenses and other charges paid and accrued;

(iv) Income on investments;

(v) Other adjustments;

(vi) Sum of items (i) minus (ii) minus (iii) plus (iv) plus or minus (v).

(2) The Carrier shall have its most recent financial statement and that of its underwriter, if any, audited by an accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The report shall be submitted to OPM not later than 180 days after the end of the contract period.

(3) Based on the results of either the independent audit or a Government audit, the Carrier's annual accounting statements may be (i) adjusted by amounts found not to constitute allowable costs; or (ii) adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) The allowable costs chargeable to the contract for a contract period shall be the actual, necessary and reasonable amounts incurred with proper justification and accounting support, determined in accordance with the terms of this contract, subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 1631.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR) applicable on the first day of the contract period.

(2) In the absence of specific contract terms to the contrary, contract costs shall be classified in accordance with the following criteria:

(i) *Benefits.* Benefit costs consist of payments made and liabilities incurred for covered health care services on behalf of FEHBP subscribers, less any refunds, rebates, allowances or other credits received.

(ii) *Administrative expenses.* Administrative expenses consist of all allocable, allowable and reasonable expenses incurred in the adjudication of subscriber benefit claims or incurred in the Carrier's overall operation of the business. Unless otherwise stated in the contract, administrative expenses include, in part: all taxes (excluding premium taxes, as provided in section 1631.205-41), insurance and reinsurance premiums, medical and dental consultants used in the adjudication process, concurrent or managed care review when not billed by a health care provider and other forms of utilization review, the cost of maintaining eligibility files, legal expenses incurred in the litigation of benefit payments and bank charges for letters of credit. Administrative expenses exclude the cost of carrier personnel, equipment, and facilities directly used in the delivery of health care services, which are benefit costs, and the expense of managing the FEHBP investment program which is a reduction of investment income earned.

(iii) *Investment income.* The Carrier is required to invest and reinvest all funds on hand, including any in the Special Reserve or any attributable to the reserve for incurred but unpaid claims, which are in excess of the funds needed to discharge promptly the obligations incurred under the contract. Investment income represents the net amount earned by the Carrier after deducting investment expenses as a result of investing the FEHBP funds. The direct or allocable indirect expenses incurred in managing the investment program, such as consultant or management fees are chargeable against the investment income earned.

(iv) *Other charges—(A) Mandatory statutory reserves.* Charges for mandatory statutory reserves are not allowable unless specifically provided for in the contract. When the term "mandatory statutory reserve" is specifically identified as an allowable contract charge without further definition or explanation, it means a requirement imposed by State law upon the Carrier to set aside a specific amount or rate of funds into a restricted reserve that is accounted for separately from all other reserves and surpluses of the Carrier and which may be used only with the specific approval of the State official designated by law to make such approvals. The amount chargeable to the contract may not exceed an allocable portion of the amount actually set aside. If the statutory reserve is no longer required for the purpose for which it was created, and these funds become available for the general use of the Carrier, a pro rata share based upon FEHBP's contribution to the total Carrier's

set aside shall be returned to the FEHBP in accordance with FAR 31.201-5.

(B) *Premium taxes.* When the term *premium taxes* is used in this contract without further definition or explanation, it means a tax, fee, or other monetary payment directly or indirectly imposed on FEHB premiums by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority of those entities, with the sole exception of a tax on net income or profit, if that tax, fee, or payment is applicable to a broad range of business activity.

(c) *Certification of Accounting Statement Accuracy.* (1) The Carrier shall certify the annual accounting statement in the form set forth in paragraph (c)(3) of this clause. The certificate shall be signed by the chief executive officer and the chief financial officer of the Carrier.

(2) The Carrier shall require an authorized agent of its underwriter, if any, also to certify the annual accounting statement.

(3) The certificate required shall be in the following form:

*Certification of Accounting Statement Accuracy*

This is to certify that I have reviewed this accounting statement and to the best of my knowledge and belief:

1. The statement was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract period in conformity with those guidelines;

2. The costs included in the statement are allowable and allocable in accordance with the terms of the contract and with the cost principles of the Federal Employees Health Benefits Acquisition Regulation and the Federal Acquisition Regulation;

3. Income, rebates, allowances, refunds and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the statement;

4. If applicable, the letter of credit account was managed in accordance with 5 CFR part 890, 48 CFR chapter 16, and OPM guidelines.

Carrier Name: \_\_\_\_\_

\_\_\_\_\_  
Name of Chief Executive Officer  
(Type or Print)

\_\_\_\_\_  
Name of Chief Financial Officer  
(Type or Print)

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Signature of Chief Financial Officer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Underwriter:

\_\_\_\_\_  
Name and Title of Responsible Corporate  
Official (Type or Print):

\_\_\_\_\_  
Signature of Responsible Corporate Official:

\_\_\_\_\_  
Date Signed:

(End of Certificate)

(End of Clause)

[55 FR 27416, July 2, 1990, as amended at 56 FR 57497, Nov. 12, 1991; 57 FR 14360, Apr. 20, 1992]

#### **1652.222-70 Notice of significant events.**

As prescribed in 1622.103-70, the following clause shall be inserted in all FEHBP contracts.

##### **NOTICE OF SIGNIFICANT EVENTS (JAN 1991)**

(a) The Carrier agrees to notify OPM of any Significant Event within ten (10) working days after the Carrier becomes aware of it. As used in this section, a Significant Event is any occurrence or anticipated occurrence that might reasonably be expected to have a material effect upon the Carrier's ability to meet its obligations under this contract, including, but not limited to, any of the following:

- (1) Disposal of major assets;
- (2) Loss of 15% or more of the Carrier's overall membership;
- (3) Termination or modification of any contract or subcontract if such termination or modification might have a material effect on the Carrier's obligations under this contract;
- (4) Addition or termination of provider agreements;
- (5) Any changes in underwriters, reinsurers, or participating plans;
- (6) The imposition of, or notice of the intent to impose, a receivership, conservatorship, or special regulatory monitoring;
- (7) The withdrawal of, or notice of intent to withdraw, State licensing, HHS qualification, or any other status under Federal or State law;
- (8) Default on a loan or other financial obligation;
- (9) Any actual or potential labor dispute that delays or threatens to delay timely performance or substantially impairs the functioning of the Carrier's facilities or facilities used by the Carrier in the performance of the contract;

(10) Any change in its charter, constitution, or by-laws which affects any provision of this contract or the Carrier's participation in the Federal Employees Health Benefits Program; or

(11) Any significant changes in policies and procedures or interpretations of the contract or brochure which would affect the benefits available under the contract or the costs charged to the contract.

(12) Any fraud, embezzlement or misappropriation of FEHB funds; or

(13) Any written exceptions, reservations or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Carrier to provide an opinion on its annual financial statements.

(b) Upon learning of a Significant Event OPM may institute action, in proportion to the seriousness of the event, to protect the interest of Members, including, but not limited to—

(1) Directing the Carrier to take corrective action;

(2) Suspending new enrollments under this contract;

(3) Advising Enrollees of the Significant Event and providing them an opportunity to transfer to another plan;

(4) Withholding payment of subscription income or restricting access to the Carrier's Letter of Credit account.

(5) Terminating the enrollment of those enrollees who, in the judgment of OPM, would be adversely affected by the Significant Event; or

(6) Terminating this contract pursuant to section 1.15, renewal and withdrawal of approval.

(c) Prior to taking action as described in paragraph (b) of this clause, the OPM will notify the Carrier and offer an opportunity to respond.

(d) The Carrier shall insert this clause in any subcontract or subcontract modification if both the amount of the subcontract or modification charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds \$100,000 and the amount of the subcontract or modification to be charged to the FEHBP (or, in the case of a community rated carrier, applicable to the FEHBP) exceeds 25 percent of the total cost of the subcontract or modification. If the Carrier is a CMP, it shall also insert this clause in all provider agreements over \$25,000. If the Carrier is not a CMP, it shall also insert this clause in the contract with its underwriter, if any. The Carrier shall substitute "Contractor" or other appropriate reference for the term "Carrier."

## Office of Personnel Management

1652.232-71

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

### **1652.224-70 Confidentiality of records.**

As prescribed in 1624.104, the following clause shall be inserted in all FEHBP contracts:

#### CONFIDENTIALITY OF RECORDS (JAN 1991)

(a) The Carrier shall use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published annually in the FEDERAL REGISTER as a part of OPM's notice of systems of records.

(b) The Carrier shall also hold all medical records, and information relating thereto, of Federal subscribers and family members confidential except as follows:

(1) As may be reasonably necessary for the administration of this contract;

(2) As authorized by the patient or his or her guardian;

(3) As disclosure is necessary to permit Government officials having authority to investigate and prosecute alleged civil or criminal actions;

(4) As necessary to audit the contract;

(5) As necessary to carry out the coordination of benefits provisions of this contract; and

(6) For bona fide medical research or educational purposes. Release of information for medical research or educational purposes shall be limited to aggregated information of a statistical nature that does not identify any individual by name, social security number, or any other identifier unique to an individual.

(c) If the carrier uses medical records for the administration of the contract, or for bona fide medical research or educational purposes, it shall so state in the plan's brochure.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27417, July 2, 1990]

### **1652.232-70 Payments—community-rated contracts.**

As prescribed in 1632.171, the following clause shall be inserted in all community-rated FEHBP contracts:

#### PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the plan by the Employees Health Benefits

Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be due and payable not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper charges against this contract to the extent that the reserves held by the Carrier are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14360, Apr. 20, 1992]

### **1652.232-71 Payments—experience-rated contracts.**

As prescribed in 1632.172, the following clause shall be inserted in all experience-rated FEHBP contracts:

#### PAYMENTS

(a) OPM will pay to the Carrier, in full settlement of its obligations under this contract, subject to adjustment for error or fraud, the subscription charges received for the Plan by the Employees Health Benefits Fund (hereinafter called the Fund) less the amounts set aside by OPM for the Contingency Reserve and for the administrative expenses of OPM, plus any payments made by OPM from the Contingency Reserve.

(b) The specific subscription rates, charges, allowances and limitations applicable to the contract are set forth in Appendix B.

(c) Recurring payments from premiums shall be made available for carrier and/or underwriter drawdown not later than thirty days after receipt by the Fund. The Contracting Officer may authorize special non-recurring payments from the Contingency Reserve in accordance with OPM's regulations.

(d) In the event this contract between the Carrier and OPM is terminated or not renewed in accordance with General Provision 1.15, RENEWAL and WITHDRAWAL OF APPROVAL, the Contingency Reserve of the Carrier held by OPM shall be available to the Carrier to pay the necessary and proper

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charges against this contract to the extent that the Carrier reserves are insufficient for that purpose.

(End of Clause)

[53 FR 51784, Dec. 23, 1988, as amended at 57 FR 14361, Apr. 20, 1992]

### **1652.232-72 Non-commingling of FEHBP funds.**

As prescribed in 1632.772, the following clause shall be inserted in all contracts based on cost analysis.

NON-COMMINGLING OF FUNDS (JAN 1991)

(a) The Carrier and/or its underwriter shall keep all FEHBP funds for this contract (cash and investments) physically separate from funds obtained from other sources. Accounting for such FEHBP funds shall not be based on allocations or other sharing mechanisms and shall agree with the Carrier's accounting records.

(b) In certain instances the physical separation of FEHBP funds may not be practical or desirable. In such cases, the Carrier may request a waiver from this requirement from the Contracting Officer. The waiver shall be requested in advance and the Carrier shall demonstrate that accounting techniques have been established that will clearly measure FEHBP cash and investment income (i.e., subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records shall be provided as supporting schedules to the Annual Accounting Statements.

(c) The Carrier shall incorporate this clause in all subcontracts that exceed \$25,000 and shall substitute "contractor" or other appropriate reference for "Carrier and/or its underwriter."

(End of Clause)

[52 FR 16044, May 1, 1987. Redesignated at 53 FR 51784, Dec. 23, 1988, and amended at 55 FR 27418, July 2, 1990]

### **1652.232-73 Approval for the Assignment of Claims.**

As prescribed in 1632.806-70, the following clause shall be inserted in all FEHBP contracts:

APPROVAL FOR ASSIGNMENT OF CLAIMS (JAN 1991)

(a) Notwithstanding the provisions of section 5.35, (FAR 52.232-23) Assignment of Claims, the Carrier shall not make any assignment under the Assignment of Claims Act without the prior written approval of the Contracting Officer.

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(b) Unless a different period is specified in the Contracting Officer's written approval, an assignment shall be in force only for a period of 1 year from the date of the Contracting Officer's approval. However, assignments may be renewed upon their expiration.

(End of Clause)

[55 FR 27418, July 2, 1990]

### **1652.244-70 Subcontracts.**

As prescribed by 1644.270, the following clause shall be inserted in all FEHBP contracts:

SUBCONTRACTS (JAN 1991)

(a) The Carrier shall notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, if both the amount of the subcontract or modification charged to the FEHB Program (in the case of a community rated carrier, applicable to the FEHB Program) exceeds \$100,000 and is 25 percent of the total cost of the subcontract.

(b) The advance notification required by paragraph (a) of this clause shall include the information specified below:

(1) A description of the supplies or services to be subcontracted;

(2) Identification of the type of subcontract to be used;

(3) Identification of the proposed subcontract and an explanation of why and how the proposed subcontractor was selected, including the competition obtained;

(4) The proposed subcontract price and the Carrier's cost or price analysis;

(5) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions;

(6) The subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract; and

(7) A negotiation memorandum reflecting—

(i) The principal elements of the subcontract price negotiations;

(ii) The most significant consideration controlling establishment of initial or revised prices;

(iii) The reason cost or pricing data were or were not required;

(iv) The extent, if any, to which the Carrier did not rely on the subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;

(v) The extent to which it was recognized in the negotiation that the subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the



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Carrier and the subcontractor; and the effect of any such defective data on the total price negotiated;

(vi) The reasons for any significant difference between the Carrier's price objective and the price negotiated; and

(vii) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(c) The Carrier shall obtain the Contracting Officer's written consent before placing any subcontract for which advance notification is required under paragraph (a) of this clause. However, the Contracting Officer may ratify in writing any such subcontract. Ratification shall constitute the consent of the Contracting Officer.

(d) The Contracting Officer may waive the requirement for advance notification and consent required by paragraphs (a), (b), and (c) of this clause where the Carrier and subcontractor submit an application or renewal as a contractor team arrangement as defined in FAR subpart 9.6 and—

(1) The Contracting Officer evaluated the arrangement during negotiation of the contract or contract renewal; and

(2) The subcontractor's price and/or costs were included in the plan's rates that were reviewed and approved by the Contracting Officer during negotiation of the contract or contract renewal.

(e) Unless the consent or approval specifically provides otherwise, consent by the Contracting Officer to any subcontract shall not constitute a determination (1) of the acceptability of any subcontract terms or conditions; (2) of the allowability of any cost under this contract; or (3) to relieve the Carrier of any responsibility for performing this contract.

(f) No subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.903(d). Any profit or fee payable under a subcontract shall be in accordance with the provision of subpart 3.7, Service charge.

(g) The Carrier shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Carrier by any subcontractor or vendor that, in the opinion of the Carrier, may result in litigation related in any way to this contract with respect to which the Carrier may be entitled to reimbursement from the Government.

(End of clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990]

### 1652.246-70 FEHB Inspection.

As prescribed in 1646.301, the following clause shall be inserted in all FEHBP contracts:

FEHB INSPECTION (JAN 1991)

(a) The Government or its agent has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government or its agent performs inspection or evaluation on the premises of the Carrier or a subcontractor, the Carrier shall furnish and require the subcontractor to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(b) The Carrier shall insert this clause in all subcontracts for underwriting and administrative services and shall substitute "Contractor" or other appropriate reference for the term "Carrier."

(End of Clause)

[55 FR 27418, July 2, 1990]

### 1652.249-70 Renewal and withdrawal of approval.

As prescribed in 1649.101-70, the following clause shall be inserted in all FEHBP contracts:

RENEWAL AND WITHDRAWAL OF APPROVAL  
(JAN 1991)

(a) Pursuant to 5 U.S.C. 8902(a), the contract renews automatically for a term of 1 year each January 1st, unless written notice of intent not to renew is given either by OPM or the Carrier not less than 60 calendar days before the renewal date, or unless modified by mutual agreement.

(b) This contract also may be terminated at other times by order of OPM pursuant to 5 U.S.C. 8902(e). After OPM notifies the Carrier of its intent to terminate the contract, OPM may take action as it deems necessary to protect the interests of members, including but not limited to—

(1) Suspending new enrollments under the contract;

(2) Advising enrollees of the asserted deficiencies; and

(3) Providing enrollees an opportunity to transfer to another Plan.

(c) OPM may, after proper notice, terminate the contract at the end of the contract term if it finds that the Carrier did not have

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at least 300 enrollees enrolled in its plan at any time during the two preceding contract terms.

(End of Clause)

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 57 FR 19388, May 6, 1992]

**Subpart 1652.3—FEHBP Clause Matrix**

**1652.370 Use of the matrix.**

(a) The matrix in this section lists the FAR and FEHBP clauses to be used with contracts based on cost analysis and contracts based on established catalog or market price. Carriers shall submit initial applications and re-

quests for renewals on the basis that the new contract or contract renewal will include the clauses indicated.

(b) Certain contract clauses are mandatory for FEHBP contracts. Other clauses are to be used only when made applicable by pertinent sections of the FAR or FEHBP. An “M” in the “Use Status” column indicates that the clause is mandatory. An “A” indicates that the clause is to be used only when the applicable conditions are met.

(c) Clauses are incorporated in the contract either in full text or by reference. If the full text is to be used, the matrix indicates a “T”. If the clause is incorporated by reference, the matrix indicates an “R”.

**FEHBP CLAUSE MATRIX**

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.202–1 .....	FAR 2.2 .....	Definitions .....	M .....	T .....	T .....
FAR 52.203–1 .....	FAR 3.102–2 .....	Officials Not to Benefit .....	M .....	T .....	T .....
FAR 52.203–3 .....	FAR 3.202 .....	Gratuities .....	M .....	T .....	T .....
FAR 52.203–5 .....	FAR 3.404(c) .....	Covenant Against Contingent Fees.	M .....	T .....	T .....
FAR 52.203–7 .....	FAR 3.502–3 .....	Anti-Kickback Procedures	M .....	T .....	T .....
FAR 52.203–9 .....	FAR 3.104–10(b) .....	Requirement for Certificate of Procurement Integrity—Modification.	M .....	T .....	T .....
FAR 52.203–12 .....	FAR 3.808 .....	Limitation on Payments to Influence Certain Federal Transactions.	M .....	T .....	T .....
1652.203–70 .....	1603–703 .....	Misleading, Deceptive, or Unfair Advertising.	M .....	T .....	T .....
1652.204–70 .....	1604.705 .....	Contractor Records Retention.	M .....	T .....	T .....
1652.204–71 .....	1604.7001 .....	Coordination of Benefits .....	M .....	T .....	T .....
FAR 52.209–6 .....	FAR 9.409(b) .....	Protecting the Government's Interest When Subcontracting With Contractors Debarred, Suspended, or Proposed for Debarment.	M .....	T .....	T .....
FAR 52.215–1 .....	FAR 15.106–1(b) .....	Examination of Records by Comptroller General.	M .....	T .....	T .....
FAR 52.215–2 .....	FAR 15.106–2(b) .....	Audit-Negotiation .....	M .....	T .....	T .....
FAR 52.215–22 .....	FAR 15.804–8(a) .....	Price Reduction for Defective Cost or Pricing Data.	M .....	T .....	T .....
FAR 52.215–23 .....	FAR 15.804–8(b) .....	Price Reduction for Defective Cost or Pricing Data—Modifications.	M .....	T .....	T .....
FAR 52.215–24 .....	FAR 15.804–8(c) .....	Subcontractor Cost or Pricing Data.	M .....	T .....	T .....
FAR 52.215–25 .....	FAR 15.804–8(d) .....	Subcontractor Cost or Pricing Data—Modifications.	M .....	T .....	T .....
FAR 52.215–27 .....	FAR 15.804–8(e) .....	Termination of Defined Benefit Pension Plans.	M .....	T .....	T .....
FAR 52.215–30 .....	FAR 15.904 .....	Facilities Capital Cost of Money.	M .....	T .....	T .....
FAR 52.215–31 .....	FAR 15.904 .....	Waiver of Facilities Capital Cost of Money.	A .....	T .....	T .....

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## FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
FAR 52.215–39 .....	FAR 15.804–8(f) .....	Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).	M .....	T .....	T
1652.215–70 .....	1615.804–72 .....	Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.	M .....	.....	T
1652.215–71 .....	1615.805–71 .....	Investment Income .....	M .....	T .....	.....
1652.216–70 .....	1616.270 .....	Accounting and Price Adjustment.	M .....	.....	T
1652.216–71 .....	1616.271 .....	Accounting and Allowable Cost.	M .....	T .....	.....
FAR 52.219–8 .....	FAR 19.708(a) .....	Utilization of Small Business Concerns and Small Disadvantaged Business Concerns.	M .....	T .....	T
FAR 52.219–13 .....	FAR 19.902 .....	Utilization of Women-Owned Small Businesses.	M .....	T .....	T
FAR 52.220–3 .....	FAR 20.302(a) .....	Utilization of Labor Surplus Area Concerns.	M .....	T .....	T
FAR 52.222–1 .....	FAR 22.103–5(a) .....	Notice to the Government of Labor Disputes.	M .....	T .....	T
FAR 52.222–3 .....	FAR 22.202 .....	Convict Labor .....	M .....	T .....	T
FAR 52.222–4 .....	FAR 22.305(a) .....	Contract Work Hours and Safety Standards Act—Overtime Compensation—General.	M .....	T .....	T
FAR 52.222–26 .....	FAR 22.810(e) .....	Equal Opportunity .....	M .....	T .....	T
FAR 52.222–28 .....	FAR 22.810(g) .....	Equal Opportunity Preaward Clearance of Subcontracts.	M .....	T .....	T
FAR 52.222–29 .....	FAR 22.810(h) .....	Notification of Visa Denial	A .....	T .....	T
FAR 52.222–35 .....	FAR 22.1308(a) .....	Affirmative Action for Special Disabled and Vietnam Era Veterans.	M .....	T .....	T
FAR 52.222–36 .....	FAR 22.1408(a) .....	Affirmative Action for Handicapped Workers.	M .....	T .....	T
1652.222–70 .....	1622.103–70 .....	Notice of Significant Events	M .....	T .....	T
FAR 52.223–2 .....	FAR 23.105(b) .....	Clean Air and Water .....	A .....	T .....	T
FAR 52.223–6 .....	FAR 23.505(c) .....	Drug-Free Workplace .....	A .....	T .....	T
1652.224–70 .....	1624.104 .....	Confidentiality of Records	M .....	T .....	T
FAR 52.229–3 .....	FAR 29.401–3 .....	Federal, State and Local Taxes.	M .....	.....	T
FAR 52.229–4 .....	FAR 29.401–4 .....	Federal, State and Local Taxes (Noncompetitive Contract).	M .....	T .....	.....
FAR 52.229–5 .....	FAR 29.401–5 .....	Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	A .....	T .....	T
FAR 52.229–6 .....	FAR 29.402–1(a) .....	Taxes—Foreign Fixed Price Contracts.	A .....	T .....	T
FAR 52.230–2 .....	FAR 30.201–4(a)(1) .....	Cost Accounting Standards	A .....	T .....	T
FAR 52.230–3 .....	FAR 30.201–4(b)(1) .....	Disclosure and Consistency of Cost Accounting Practices.	A .....	T .....	T
FAR 52.230–5 .....	FAR 30.201–4(d)(1) .....	Administration of Cost Accounting Standards.	A .....	T .....	T
FAR 52.232–8 .....	FAR 32.111(c)(1) .....	Discounts for Prompt Payment.	M .....	T .....	T
FAR 52.232–17 .....	FAR 32.617(a) Modification: 1632.617.	Interest .....	M .....	.....	T
FAR 52.232–23 .....	FAR 32.806(a)(1) .....	Assignment of Claims .....	A .....	T .....	T
1652.232–70 .....	1632.171 .....	Payments—contracts without letter of credit payment arrangements.	A .....	T .....	T
1652.232–71 .....	1632.172 .....	Payments—contracts with letter of credit payment arrangements.	A .....	T .....	T

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## FEHBP CLAUSE MATRIX—Continued

Clause no.	Text reference	Title	Use status	Use with contracts based on	
				Cost analysis	Price analysis
1652.232–72 .....	1632.772 .....	Non-Commingling of FEHBP Funds.	M .....	T .....	
1652.232–73 .....	1632.806–70 .....	Approval for Assignment of Claims.	M .....	T .....	T
FAR 52.233–1 .....	FAR 33.214 .....	Disputes .....	M .....	T .....	T
FAR 52.242–1 .....	FAR 42.802 .....	Notice of Intent to Disallow Costs.	M .....	T .....	
FAR 52.242–13 .....	FAR 42.903 .....	Bankruptcy .....	M .....	T .....	T
FAR 52.249–2 .....	FAR 49.502(b)(1)(i) .....	Termination for Convenience of the Government (Fixed-Price).	M .....	T .....	T
FAR 52.249–8 .....	FAR 49.504(a)(1) .....	Default (Fixed-Price Supply and Service).	M .....	T .....	T
FAR 52.243–1 .....	FAR 43.205(a)(1) .....	Changes—Fixed Price—Alternate I.	M .....	T .....	T
1652.244–70 .....	1644.270 .....	Subcontracts .....	M .....	T .....	T
FAR 52.244–5 .....	FAR 44.204(e) .....	Competition in Subcontracting.	M .....	T .....	T
FAR 52.245–2 .....	FAR 45.106(b)(1) .....	Government Property (Fixed-Price Contracts).	M .....	T .....	T
FAR 52.246–25 .....	FAR 46.805(a)(4) .....	Limitation of Liability—Services.	M .....	T .....	
1652.246–70 .....	1646.301 .....	FEHBP Inspection .....	M .....	T .....	T
FAR 52.247–63 .....	FAR 47.405 .....	Preference for U.S.-Flag Air Carriers.	M .....	T .....	T
1652.249–70 .....	1649.101–70 .....	Renewal and Withdrawal of Approval.	M .....	T .....	T
FAR 52.251–1 .....	FAR 51.107 .....	Government Supply Sources.	A .....	T .....	
FAR 52.252–2 .....	FAR 52.107(b) .....	Clauses Incorporated by Reference.	M .....	T .....	T
FAR 52.252–4 .....	FAR 52.107(d) .....	Alterations in Contract .....	M .....	T .....	T
FAR 52.252–6 .....	FAR 52.107(f) .....	Authorized Deviations in Clauses.	M .....	T .....	T

[52 FR 16044, May 1, 1987, as amended at 55 FR 27418, July 2, 1990; 59 FR 14767, Mar. 30, 1994]

## PART 1653—FORMS

AUTHORITY: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

**1653.000 FEHBP forms.**

The following forms specified in FAR subparts 53.2 and 53.3 are applicable to FEHBP acquisitions:

Part 53.2	Part 53.3	Form title
53.201–1	53.301–1402	SF 1402—Certificate of Appointment.
53.203	53.301–119	SF 119—Statement of Contingent or Other Fees.

Part 53.2	Part 53.3	Form title
53.204–2(a)	53.301–279	SF 279 FPDS—Individual Contract Action Report (over \$10,000).
53.204–2(b)	53.301–281	SF 281 FPDS—Summary of Contract Actions of \$10,000 or less.
53.215–2(b)	53.301–1412	SF 1412—Claim for Exemption from Submission of Certified Cost or Pricing Data.
53.229	53.301–1094	SF 1094—U.S. Tax Exemption Certificate.
53.229	53.301–1094A	SF 1094A—Tax Exemption Certificates Accountability Record.

[52 FR 16048, May 1, 1987]

CHAPTER 17—OFFICE OF PERSONNEL  
MANAGEMENT

(Parts 1700 to 1799)

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## **PART 1733—PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 1733.2—Disputes and Appeals**

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1733.203-70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.

1733.209 Suspected fraudulent claims.

1733.211 Contracting officer's decision.

1733.212 Contracting officer's duties upon appeal.

1733.214 Contract clause.

AUTHORITY: 40 U.S.C. 486(c); 48 CFR 1.301.

SOURCE: 51 FR 44296, Dec. 9, 1986, unless otherwise noted.

### **Subpart 1733.2—Disputes and Appeals**

#### **1733.203 Applicability.**

(a) The Office of Personnel Management's (OPM) procurement executive shall make the determination prescribed under FAR 33.203(b).

(b) Requests for determinations under paragraph (a) of this section shall be submitted by OPM's contracting officer through OPM's head of the contracting activity to the procurement executive for further action.

#### **1733.203-70 Designation of the Interior Board of Contract Appeals to decide OPM appeals.**

(a) The Interior Board of Contract Appeals (IBCA) has been designated by the Director of OPM to consider and determine appeals from decisions of a contracting officer arising under a contract or relating to a contract made by OPM. This delegation governs disputes between OPM and its prime contractors and does not encompass any claim made by a third party beneficiary of, or by a subscriber to, a Federal employee insurance program.

(b) The address of IBCA is 4015 Wilson Boulevard, Arlington, VA 22203.

(c) IBCA rules of procedure can be found in 43 CFR part 4.

#### **1733.209 Suspected fraudulent claims.**

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter through the head of the contracting activity to OPM's Offices of the Inspector General and the General Counsel.

#### **1733.211 Contracting officer's decision.**

The written decision required by FAR 33.211(a)(4) shall include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, VA 22203, and its procedures under 43 CFR part 4. The IBCA optional small claims (expedited) procedures and accelerated procedures under 43 CFR 4.113 shall also be referenced as required by the FAR.

#### **1733.212 Contracting officer's duties upon appeal.**

(a) When a notice of appeal has been received, the contracting officer shall endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed) and forward it to IBCA by certified mail within 5 days of receipt. OPM's Office of the General Counsel and the Department of the Interior's (DOI) Office of the Solicitor shall also be notified of the appeal by the contracting officer. 43 CFR 4.103.

(b) The contracting officer shall prepare and transmit the documentation and information required by 43 CFR 4.104 in the form of an appeal file to IBCA, OPM's Office of the General Counsel, DOI's Office of the Solicitor, and appellant or appellant's counsel within 30 days after receipt of a notice of appeal or advice that an appeal has been docketed by IBCA.

#### **1733.214 Contract clause.**

The Disputes clause contained in FAR 52.233-1 shall be used with its Alternate I in all OPM solicitations and contracts.

# CHAPTER 18—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

(Parts 1800 to 1899)

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EDITORIAL NOTE: Nomenclature changes to Chapter 18 appear at 58 FR 51136, Sept. 30, 1993.



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### PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

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#### Subpart 1801.1 Purpose, Authority, Issuance

1801.103 Authority.

1801.104 Applicability.

1801.105 Issuance.

1801.105-1 Publication and code arrangement.

1801.105-2 Arrangement of regulations.

1801.105-3 Copies.

1801.105-370 Internal dissemination.

1801.106 OMB approval under the Paperwork Reduction Act.

#### Subpart 1801.2 Administration

1801.270 Amendment of Regulation.

1801.270-1 Revisions.

1801.270-2 Procurement Notices.

1801.270-3 Effective date.

1801.270-4 Numbering.

1801.271 NASA procedures for FAR and NFS changes.

1801.272 Procurement Information Circulars.

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1801.301 Policy.

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#### Subpart 1801.6 Career Development, Contracting Authority, and Responsibilities

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1801.602-3 Ratification of unauthorized commitments.

1801.603 Selection, appointment, and termination of appointment.

1801.603-2 Selection.

1801.670 Delegations to contracting officer's technical representatives (COTRs).

#### Subpart 1801.7 Determinations and Findings

1801.707 Signatory authority.

1801.770 Legal review.

Authority: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40534, Aug. 5, 1996, unless otherwise noted.

#### 1801.000 Scope of part.

This part sets forth general information about the National Aeronautics and Space Administration (NASA) Federal Acquisition Regulations (FAR) Supplement, also referred to as the NFS.

#### Subpart 1801.1—Purpose, Authority, Issuance

##### 1801.103 Authority. (NASA supplements paragraph (a))

(a) Under the following authorities, the Administrator has delegated to the Associate Administrator for Procurement authority to prepare, issue, and maintain the NFS:

(i) The National Aeronautics and Space Act of 1958 (Public Law 85-568; 42 U.S.C. 2451 et seq.).

(ii) 10 U.S.C. chapter 137.

(iii) Other statutory authority.

(iv) FAR subpart 1.3.

##### 1801.104 Applicability.

The NFS applies to all acquisitions as defined in FAR Part 2 except those expressly excluded by the FAR or this chapter.

##### 1801.105 Issuance.

##### 1801.105-1 Publication and code arrangement. (NASA supplements paragraphs (a) and (b))

(a)(i) The NFS is published in the same publications and formats as the FAR.

(ii) The NFS is published in “editions” and “versions.” An “edition” is a loose-leaf publication of the entire regulation and is denoted by the calendar year of publication. A “version” is the basic loose-leaf edition NFS with all NFS Directive (NFSD) change pages filed up to and including the NFSD number that corresponds to the “version” number. For example, for the 1989 edition of the NFS, Version 89.3 consists of pages from NFSD 89-0 (basic NFS), with change pages filed from NFSDs 89-1, 89-2, and 89-3.

(b) The NFS is issued as chapter 18 of title 48, Code of Federal Regulations (CFR).

**1801.105-2 Arrangement of regulations. (NASA supplements paragraph (b))**

(b)(1)(A) Numbering of NFS text implementing the FAR shall be the same as that of the related FAR text, except when the NFS coverage exceeds one paragraph. In such case the NFS text is numbered by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence. For example, two paragraphs implementing FAR 1.105-2(b)(1) are numbered 1801.105-2(b)(1) (A) and (B), rather than (1) (i) and (ii). Further subdivision of the NFS implementing paragraphs would follow the prescribed sequence in FAR 1.105(b)(2).

(B) NFS text that supplements the FAR is numbered the same as its FAR counterpart with the addition of a number 70 and up. For example, NFS supplement of FAR subsection 1.105-3 is numbered 1801.105-370. Supplemental text exceeding one paragraph is numbered using the FAR 1.105-2(b)(2) prescribed numbering sequence without skipping a unit.

(2) Subdivision numbering below the fourth level repeats the numbering sequence using italicized letters and numbers.

**1801.105-3 Copies (NASA paragraphs (1), (2) and (3))**

(1) Subscriptions to the NFS may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 512-1800. All requests should cite the NFS GPO Subscription Stock No. 933-003-00000-1. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by GPO.

(2) The NFS is also available on the Internet (address: <http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm>).

(3) Copies of NASA Handbooks (NHBs), NASA Management Instructions (NMIs), NASA Policy Directives (NPDs), and NASA Procedures and Guidelines (NPGs) may be obtained from NASA Headquarters, Office of

Management Systems and Facilities (Code JM).

**1801.105-370 Internal dissemination.**

The Headquarters Office of Procurement (Code HK), (202-358-1248), distributes the FAR, Federal Acquisition Circulars (FACs), the NFS, NFSDs, Procurement Notices (PNs), and Procurement Information Circulars (PICs) directly to NASA Headquarters offices and installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation.

**1801.106 OMB approval under the Paperwork Reduction Act. (NASA paragraphs (1) and (2))**

(1) *NFS requirements.* The following OMB control numbers apply:

NFS segment	OMB control No.
1815.406-70(b)(5)(iii) .....	2700-0082
1815.608-72 .....	2700-0080
1819 .....	2700-0073
1819.72 .....	2700-0078
1827 .....	2700-0052
1843 .....	2700-0054
NF 533 .....	2700-0003
NF 667 .....	2700-0004
NF 1018 .....	2700-0017

(2) *Solicitations and contracts.* Various requirements in a solicitation or contract, generally in the statement of work, are not tied to specific paragraphs cleared in paragraph (1) of this section, yet require information collection or recordkeeping. The following OMB control numbers apply to these requirements: 2700-0086 (acquisitions up to \$25,000), 2700-0087 (solicitations that may result in bids or proposals not exceeding \$500,000), 2700-0085 (solicitations that may result in bids or proposals exceeding \$500,000), 2700-0088 (contracts not exceeding \$500,000), and 2700-0089 (contracts exceeding \$500,000).

**Subpart 1801.2—Aministration**

**1801.270 Amendment of regulation.**

**1801.270-1 Revisions.**

The NFS is amended by publishing amendments in the FEDERAL REGISTER and issuing NFSDs containing loose-

leaf replacement pages revising various segments of it (also see 1801.270-2). Each replacement page bears the NFSD number and page number at the top. A vertical bar at the side of a line indicates that a change has been made within that line.

**1801.270-2 Procurement Notices.**

(a) The NFS is amended by publishing amendments in the FEDERAL REGISTER and issuing Procurement Notices (PNs) when it is necessary or advisable to change the NFS in advance of an NFSD.

(b) Unless otherwise indicated, each PN remains in effect until the effective date of the subsequent NFSD incorporating the PN or until specifically canceled.

**1801.270-3 Effective date.**

(a) Compliance with a revision to the NFS shall be in accordance with the NFSD or PN containing the revision.

(b) Unless otherwise stated, solicitations that have been issued, and bilateral agreements for which negotiations have been completed, before the receipt of new or revised contract clauses need not be amended to include the new or revised clauses if including them would unduly delay the acquisition.

**1801.270-4 Numbering.**

NFSDs and PNs are numbered consecutively, prefixed by the last two digits of the calendar year of issuance of the current edition of the NFS.

**1801.271 NASA procedures for FAR and NFS changes.**

(a) Informal suggestions for improving the NFS, including correction of errors, should be directed to the Headquarters Office of Procurement (Code HK).

(b) (1) Formal requests for changes to the FAR or the NFS should be written and contain

(i) A description of the problem the suggested revision is designed to cure,

(ii) The revision in the form of a marked-up copy of the current FAR or NFS language or the text of any additional language,

(iii) The consequences of making no change and the benefits to be expected from a change, and

(iv) Any other information necessary for understanding the situation, such as relationship between FAR and NFS coverage, legal opinions, coordination with other offices, and existing agreements.

(2) Formal requests for FAR and NFS changes should be sent to Code HK. Requests from Headquarters offices should originate at the division level or higher, while installation requests should be signed at the procurement officer or higher level.

**1801.272 Procurement Information Circulars.**

(a) The Procurement Information Circular (PIC) is used for internal dissemination of procurement-related information and directives not suitable for inclusion in the NFS. Code HK is responsible for issuing PICs.

(b) PICs are numbered on a calendar year basis, beginning with number 1, prefixed by the last two digits of the year.

**Subpart 1801.3—Agency Acquisition Regulations**

**1801.301 Policy. (NASA supplements paragraphs (a) and (b))**

(a) (2) Heads of NASA field installations may prescribe policies and procedures that do not have a significant effect beyond the internal operating procedures of their installations. All other policies, procedures, and solicitation and contract provisions and clauses must be forwarded to the Headquarters Office of Procurement (Code HK) for approval in accordance with 1801.271(b).

(b) (i) 41 U.S.C. 418b requires publication of NFS changes for public comment where there will be a significant effect beyond the internal operating procedures of the agency or a significant cost or administrative impact on contractors or offerors. However, it does not define “significant effect beyond the internal operating procedures” or “significant cost or administrative impact.” Examples of policies or procedures that fall in either of these categories are:

(A) A contract clause requiring contractors to take precautions to avoid injury to Florida manatees, which have

been designated as an endangered species, has a significant cost impact for contractors who must obtain protective devices for boat propellers and take other safety actions.

(B) A contract clause requiring contractors to follow the Government's holiday schedule, thereby disallowing premium pay for work on contractor-designated holidays, will have an effect outside the internal operating procedures of the agency.

(C) A contract clause requiring contractors to segregate costs by appropriations will affect the contractor's internal accounting system and have a significant impact.

(D) Requiring contractor compliance with NASA's Space Transportation System Personnel Reliability Program will have an effect outside the internal operating procedures of the agency.

(ii) In contrast, the following would not have to be publicized for public comment:

(A) Security procedures for identifying and badging contractor personnel to obtain access at a NASA installation.

(B) A one-time requirement in a construction contract for the contractor to develop a placement plan and for inspection prior to any concrete being placed. (This is a part of the specification or statement of work.)

(C) A policy that requires the NASA installation to maintain copies of unsuccessful offers.

**1801.303 Publication and codification. (NASA supplements paragraph (a))**

(a) Part, subpart, and section numbers 70 through 89 are reserved for NFS supplementary material for which there is no FAR counterpart.

**Subpart 1801.4—Deviations From the FAR**

**1801.400 Scope of subpart.**

This subpart prescribes the policies and procedures for authorizing deviations from the FAR and the NFS.

**1801.471 Procedure for requesting deviations.**

(a) Requests for authority to deviate from the FAR or the NFS shall be submitted by the Procurement Officer to

the Headquarters Office of Procurement (Code HS).

(b) Each request for a deviation shall contain, as a minimum—

(1) Identification of the FAR or the NFS requirement from which a deviation is sought;

(2) A full description of the deviation, the circumstances in which it will be used, and the specific contract action(s) to which it applies;

(3) A description of its intended effect;

(4) A statement as to whether the deviation has been requested previously and, if so, the circumstances of the previous request;

(5) Identification of the contractor(s) and the contract(s) affected, including dollar value(s);

(6) Detailed reasons supporting the request, including any pertinent background information; and

(7) A copy of counsel's concurrence or comments.

(c) In addition to the information required by 1801.471(b), requests for individual deviations from FAR cost principles under FAR 31.101 should include a copy of the contractor's request for cost allowance.

**Subpart 1801.6—Career Development, Contracting Authority, and Responsibilities**

**1801.601 General.**

The authority to contract for authorized supplies and services is delegated to the Associate Administrator for Procurement and installation officials by NPD 5101.32.

**1801.602–3 Ratification of unauthorized commitments. (NASA supplements paragraphs (b) and (c))**

(b) Policy. Individuals making unauthorized commitments may be subject to disciplinary action, and the issue may be referred to the Office of Inspector General.

(c)(7) The authority in FAR 1.602–3 may be exercised only when—

(A) The Government employee who made the unauthorized commitment, or his/her supervisor, if appropriate, initiates a procurement request in accordance with 1804.7301.

(B) The procurement request and/or accompanying documentation identifies the individual who made the unauthorized commitment, and includes a statement signed by the individual that explains why normal acquisition procedures were not followed, explains why the firm was selected, lists other sources considered, describes the work, and estimates or states the agreed price. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel shall provide the information described in this paragraph.

(C) The procurement request is submitted through the director of the cognizant program office at the contracting activity, or comparable official. In the procurement request, the director shall describe measures taken to prevent the recurrence of the unauthorized commitment.

**1801.603 Selection, appointment, and termination of appointment.**

**1801.603-2 Selection.**

Normally, only GS-1102 and -1105 personnel with the proper training and experience may be appointed contracting officers and only when a valid organizational need can be demonstrated.

**1801.670 Delegations to contracting officer's technical representatives (COTRs).**

A COTR delegation may be made only by the contracting officer cognizant of that contract at the time the delegation is made. If the cognizant contracting officer is absent, the delegation letter may be signed by a warranted contracting officer at any level above the cognizant contracting officer. An individual COTR may have only the duties specifically identified in a written delegation to him or her by name (i.e., COTR duties may not be delegated to a position) and has no authority to exceed them. COTRs should be informed that they may be personally liable for unauthorized commitments. Contracting officer authority to sign or authorize contractual instruments shall not be delegated through a COTR designation or by any means

other than a contracting officer warrant.

**Subpart 1801.7—Determinations and Findings**

**1801.707 Signatory authority.**

Signatory authority for determinations and findings (D&Fs) is specified in the FAR or the NFS text for the associated subject matter. The Administrator may make any of the D&Fs that may be made by the Associate Administrator for Procurement or by a contracting officer.

**1801.770 Legal review.**

Each D&F, including class D&Fs, shall be reviewed by counsel for form and legality before signature by the approving authority.

**PART 1802—DEFINITIONS OF WORDS AND TERMS**

Sec.

1802.000 Scope of part.

**Subpart 1802.1—Definitions**

1802.101 Definitions.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

**1802.000 Scope of part.**

Commonly used words and terms are defined in FAR subpart 2.1. This part 1802 gives NASA-specific meanings for some of these words and terms and defines other words and terms commonly used in the NASA acquisition process.

**Subpart 1802.1—Definitions**

**1802.101 Definitions.**

*Administrator* means the Administrator or Deputy Administrator of NASA.

*Contracting activity* in NASA includes the NASA Headquarters installation and the following field installations: Ames Research Center, Dryden Flight Research Center, Goddard Space Flight Center, Johnson Space Center, Kennedy Space Center, Langley Research

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Center, Lewis Research Center, Marshall Space Flight Center, Space Station Program Office and Stennis Space Center.

*Head of the agency* or *agency head* means the Administrator or Deputy Administrator of NASA.

*Head of the contracting activity* means, for field installations, the Director or other head and, for NASA Headquarters, the Associate Administrator for Headquarters Operations.

*Procurement officer* means the chief of the contracting office, as defined in FAR 2.101.

*Senior Procurement Executive* means the Associate Administrator or Deputy Associate Administrator for Procurement, Office of Procurement, NASA Headquarters (Code H).

## PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### Subpart 1803.1—Safeguards

Sec.

1803.101 Standards of conduct.

1803.101-1 General.

1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

1803.104 Procurement integrity.

1803.104-4 Definitions.

1803.104-5 Disclosure, protection, and marking of proprietary and source selection information.

1803.104-7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service.

1803.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.

1803.104-11 Processing violations or possible violations.

1803.104-12 Ethics program training requirements.

### Subpart 1803.2—Contract or Gratuities to Government Personnel

1803.203 Reporting suspected violations of the Gratuities clause.

### Subpart 1803.3—Reports of Suspected Antitrust Violations

1803.303 Reporting suspected antitrust violations.

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### Subpart 1803.5—Other Improper Business Practices

1803.502 Subcontractor kickbacks.

### Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

1803.602 Exceptions.

### Subpart 1803.7—Voiding and Rescinding Contracts

1803.704 Policy.

1803.705 Procedures.

### Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions

1803.804 Policy.

1803.806 Processing suspected violations.

AUTHORITY: 42 U.S.C. 2473(c)(1)

SOURCE: 61 FR 40537, Aug. 5, 1996, unless otherwise noted.

## Subpart 1803.1—Safeguards

### 1803.101 Standards of conduct.

#### 1803.101-1 General.

The statutory prohibitions and their application to NASA personnel are discussed in NHB 1900.1, Standards of Conduct for NASA Employees, and NHB 1900.2, Standards of Conduct for NASA Special Government Employees. All NASA personnel involved in acquisitions shall become familiar with these statutory prohibitions. Any questions concerning them shall be referred to legal counsel. In addition to criminal penalties, the statutes provide that transactions entered into in violation of these prohibitions are voidable (18 U.S.C. 218).

#### 1803.101-2 Solicitation and acceptance of gratuities by Government personnel.

Any suspected violations shall be reported promptly to the installation's Office of Inspector General. (See Standards of Conduct for NASA Employees, NHB 1900.1.)

#### 1803.104 Procurement integrity.

##### 1803.104-4 Definitions.

Designated agency ethics official means for Headquarters, the General

Counsel, and the Associate General Counsel for General Law, and for each center, the Chief Counsel.

**1803.104-5 Disclosure, protection, and marking of proprietary and source selection information. (NASA supplements paragraphs (c) and (d))**

(c)(i) The originator of information that may be source selection information shall consult with the contracting officer or the procurement officer, who shall determine whether the information is source selection information. NASA personnel responsible for preparing material described in FAR 3.104-4(k)(2)(i) through (ix) shall assure that the material is marked with the legend in FAR 3.104-5(c) at the time the material is prepared.

(ii) Unless marked with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104," draft specifications, purchase descriptions, and statements of work are not considered source selection information and may be released during a market survey in order to determine the capabilities of potential competitive sources (see FAR subpart 7.1). All documents, once released, must remain available to the public until the conclusion of the acquisition.

(d)(1) Government employees serving in the following positions are authorized access to proprietary or source selection information, but only to the extent necessary to perform their official duties:

(A) Personnel participating in source evaluation board (SEB) procedures under 1870.303, App. I, or personnel evaluating an offeror's or bidder's technical or cost proposal under other competitive procedures, and personnel evaluating protests.

(B) Personnel assigned to the contracting office.

(C) The initiator of the procurement request (to include the official having principal technical cognizance over the requirement).

(D) Small business specialists.

(E) Personnel assigned to counsel's office.

(F) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the Department of Defense.

(G) Personnel responsible for the review and approval of documents in accordance with the Master Buy Plan Procedure in subpart 1807.71.

(H) Other government employees authorized by the contracting officer.

(I) Supervisors, at any level, of the personnel listed in paragraphs 1803.104-5(d)(1) (A) through (H).

(J) Duly designated ombudsman.

(3) For contracts and contract modifications over \$100,000, release of proprietary or source selection information to another Government activity shall be made by a letter citing the obligation under FAR 3.104-5(d) to maintain a list of persons or classes of persons authorized access to proprietary or source selection information and to provide the list to the contracting officer for the contract file.

**1803.104-7 Postemployment restrictions applicable to Government officers and employees serving as procurement officials and certifications required from procurement officials leaving Government service. (NASA supplements paragraph (a))**

(a) The contracting officer shall obtain the following certification from any procurement official leaving the Government or transferring to another Government agency or any contractor employee serving as a procurement official who ceases performance of those duties during the conduct of an acquisition expected to result in a contract or modification in excess of \$100,000.

(Certification)

**PROCUREMENT OFFICIAL CERTIFICATION UPON TERMINATION OF GOVERNMENT SERVICE**

I, [Name of procurement official], hereby certify that I understand the continuing obligation under Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) not to disclose proprietary or source selection information relating to any ongoing acquisition for which I have served as a procurement official.

Signature of procurement official and date

Identify applicable acquisitions (ones for which awards have not been made at the time of the procurement official's departure):

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES

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AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

**1803.104-8 Knowing violations, duty to inquire, and ethics advisory opinions.**

When a contracting officer has not been appointed, questions regarding whether information is proprietary or source selection information shall be referred to the procurement officer.

**1803.104-11 Processing violations or possible violations. (NASA supplements paragraphs (a), (b) and (f))**

(a)(1) The Procurement Officer is the individual designated to receive the contracting officer's report of violations in accordance with FAR 3.104-11.

(b) The head of the contracting activity (HCA) or designee shall refer all information describing an actual or possible violation to the installation's counsel and inspector general staff and to the Associate Administrator for Procurement (Code HS).

(f) When the HCA or designee determines that award is justified by urgent and compelling circumstances or is otherwise in the interest of the Government, then that official shall submit a copy of the determination to the Associate Administrator for Procurement (Attn: Code HS) simultaneous with transmittal to the Administrator.

**1803.104-12 Ethics program training requirements. (NASA supplements paragraph (a))**

(a)(3) Individuals who will serve as procurement officials shall complete either Optional Form 333 or the following certification. The Privacy Act Notice is intended for use when either the executed Optional Form 333 or the executed certification will be filed in the employee's official personnel file and a social security number is needed. When an individual's social security number is being requested, Centers may use the attached Privacy Act Notice or an appropriate alternative Privacy Act Notice. The Privacy Act Notice may be omitted if a social security number is not being requested.

(Certification)

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PROCUREMENT INTEGRITY CERTIFICATION FOR  
PROCUREMENT OFFICIALS

As a condition of serving as a procurement official, I, [Name], hereby certify that I am familiar with the provisions of subsections 27(b), (c), and (e) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) as amended by section 814 of Public Law 101-189. I further certify that I will not engage in any conduct prohibited by such subsections and will report immediately to the contracting officer any information concerning a violation or possible violation of subsections 27 (a), (b), (d), or (f) of the Act and applicable implementing regulations. A written explanation of subsections 27(a) through (f) has been made available to me. I understood that, should I leave the Government during the conduct of an acquisition for which I have served as a procurement official, I have a continuing obligation under section 27 not to disclose proprietary or source selection information relating to the acquisition and a requirement to so certify.

I understand that my execution of this certification does not make me a procurement official, nor will it be utilized to establish that I am a procurement official.

Signature and date  
(End of certification)  
(Notice)  
Name

Social Security Number

PRIVACY ACT NOTICE TO EMPLOYEES AND  
OFFICIALS

In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the following notice is provided: AUTHORITY FOR COLLECTION OF INFORMATION: 41 U.S.C. 423 and Executive Order 9397. Your signature on the Procurement Integrity Certification for Procurement Officials and disclosure of your Social Security Number are voluntary, but possible effects upon you if the certification is not signed and the Social Security Number is not provided include the following:

Disqualification from particular work or duty assignments, or from the position for which you have applied or which you currently hold, or other appropriate action, or administrative delay in processing your certification.

Principal purpose for collection of this information:

To obtain and maintain a completed certification from any person designated as a "Procurement Official," as defined by 41 U.S.C. 423 and applicable acquisition regulations.

Routine uses which may be made of the collected information:

Transfers to Federal, state, local, or foreign agencies when relevant to civil, criminal, administrative, or regulatory investigations or proceedings, including transfer to



the Office of Government Ethics in connection with its program oversight responsibilities, or pursuant to a request by any appropriate Federal agency in connection with hiring, retention, or grievance of an employee or applicant, the issuance of a security clearance, the award or administration of a contract, the issuance of a license, grant, or other benefit, to committees of the Congress, or any other use specified by the Office of Personnel Management (OPM) in the system of records entitled "PM/GOT-1. General Personnel Records," as published in the FEDERAL REGISTER periodically by OPM. (End of Notice)

### **Subpart 1803.2—Contract or Gratuities to Government Personnel**

#### **1803.203 Reporting suspected violations of the Gratuities clause.**

Any suspected violations of the clause at FAR 52.203-3, Gratuities, shall be reported to the installation's Office of Inspector General.

### **Subpart 1803.3—Reports of Suspected Antitrust Violations**

#### **1803.303 Reporting suspected antitrust violations. (NASA supplements paragraphs (b) and (d))**

(b)(i) When offers are received that, in the opinion of the contracting officer, indicate possible antitrust violations, the contracting officer shall report the circumstances to the General Counsel, NASA Headquarters, through the Office of Procurement (Code HS). Reports should not be submitted automatically but only when there is reason to believe the offers may not have been arrived at independently. These reports shall be submitted with conformed copies of bids or proposals, contract documents, and other supporting data, and shall set forth—

(A) The noncompetitive pattern or situation under consideration;

(B) Purchase experience in the same product or service for a reasonable period (one or more years) preceding receipt of the offers under consideration, including unit and total contract prices and abstracts of bids;

(C) Community of financial interest among offerors, insofar as it is known;

(D) The extent, if any, to which specification requirements or patents restrict competition;

(E) Any information available about the pricing system employed in offers believed to reflect noncompetitive practices; and

(F) Any other pertinent information.

(ii) Evidence of practices that, in the opinion of the General Counsel, NASA Headquarters, may violate the antitrust laws shall be forwarded to the Attorney General of the United States (see FAR 3.303).

(d) The contracting officer shall submit the identical bid report required by FAR 3.303(d) to NASA Headquarters, Office of Procurement (Code HS). The report shall include the reasons for suspecting collusion. Code HS shall forward a copy to the NASA Office of the Inspector General.

### **Subpart 1803.5—Other Improper Business Practices**

#### **1803.502 Subcontractor kickbacks.**

Contracting officers shall report suspected violations of the Anti-Kickback Act in accordance with 1809.470.

### **Subpart 1803.6—Contracts With Government Employees or Organizations Owned or Controlled by Them**

#### **1803.602 Exceptions.**

The Associate Administrator for Procurement has been delegated the authority to authorize an exception to the policy in FAR 3.601. The Associate Administrator for Procurement has re-delegated this authority to the heads of contracting activities (HCAs) for individual actions in the aggregate of \$100,000 and below, inclusive of follow-on acquisitions, with concurrence by the HCA's Office of Chief Counsel. All requests above the HCA's authority shall be forwarded to the Associate Administrator for Procurement (Code HS) for approval.

1803.704

### **Subpart 1803.7—Voiding and Rescinding Contracts**

#### **1803.704 Policy. (NASA supplements paragraph (a))**

(a) The Associate Administrator for Procurement has been delegated authority to void or rescind contracts when there is a final conviction for violation of 18 U.S.C. 201-224 (Bribery, Graft and Conflicts of Interest) relating to them.

#### **1803.705 Procedures.**

Procurement officers shall make reports to the Associate Administrator for Procurement (Code HS). The Associate Administrator for Procurement is responsible for the actions, notices, and decisions required by FAR 3.705(c), (d), and (e).

### **Subpart 1803.8—Limitation on the Payment of Funds to Influence Federal Transactions**

#### **1803.804 Policy**

Procurement officers shall forward one copy of each Disclosure of Lobbying Activities (SF-LLL) furnished pursuant to FAR 3.803 to the Office of Procurement (Code HS). The original shall be retained in the contract file. Forms shall be submitted semi-annually by April 15th for the six-month period ending March 31st, and by October 15th for the period ending September 30th.

#### **1803.806 Processing suspected violations.**

The Associate Administrator for Procurement (Code HS) is the designated official to whom suspected violations of the Act shall be referred.

## **PART 1804—ADMINISTRATIVE MATTERS**

### **Subpart 1804.1—Contract Executive**

Sec.

1804.103 Contract clause.

1804.170 Contract effective date.

### **Subpart 1804.2—Contract Distribution**

1804.202 Agency distribution requirements.

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### **Subpart 1804.4—Safeguarding Classified Information Within Industry**

1804.402 General.

1804.404-70 Contract clause.

1804.470 Security requirements for unclassified automated information resources.

1804.470-1 Scope.

1804.470-2 Policy.

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**Subpart 1804.73—Procurement Requests**

1804.7301 General.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40539, Aug. 5, 1996, unless otherwise noted.

**Subpart 1804.1—Contract Execution****1804.103 Contract clause.**

The contracting officer shall include the clause at FAR 52.204-1, Approval of Contract, in solicitations, contracts, and supplemental agreements that require higher level approval. For actions requiring Headquarters approval, insert "NASA Associate Administrator for Procurement" in the clause's blank space.

**1804.170 Contract effective date.**

(a) *Contract effective date* means the date agreed upon by the parties for beginning the period of performance under the contract. In no case shall the effective date precede the date on which the contracting officer or designated higher approval authority signs the document.

(b) Costs incurred before the contract effective date are unallowable unless they qualify as precontract costs (see FAR 31.205-32) and the clause prescribed at 1831.205-70 is used.

**Subpart 1804.2—Contract Distribution****1804.202 Agency distribution requirements**

In addition to the requirements in FAR 4.201, the contracting officer shall distribute one copy of each R&D contract, including the Statement of Work, to the NASA Center for Aero-Space Information (CASI), Attention: Document Processing Section, 800 Elkridge Landing Road, Linthicum Heights, MD 21090-2934.

**Subpart 1804.4—Safeguarding Classified Information Within Industry****1804.402 General. (NASA supplements paragraph (b))**

(b) NASA industrial security policies and procedures are prescribed in NMI 1600.2, NASA Security Program. (See also 1842.202-72).

**1804.404-70 Contract clause.**

The contracting officer shall insert the clause at 1852.204-75, Security Classification Requirements, in solicitations and contracts if work is to be performed will require security clearances. This clause may be modified to add instructions for obtaining security clearances and access to security areas that are applicable to the particular acquisition and installation.

**1804.470 Security requirements for unclassified automated information resources.****1804.470-1 Scope.**

This section implements the acquisition-related aspects of Federal policies for assuring the security of unclassified automated information resources.

**1804.470-2 Policy.**

NASA policies and procedures on automated information security are prescribed in NMI 2410.7, Assuring the Security and Integrity of NASA Automated Information Resources, and in NHB 2410.9, NASA Automated Information Security Handbook, Chapters 3 and 4. Security requirements for safeguarding sensitive information in unclassified Federal computer systems are required in:

(a) Contracts for automatic data processing equipment, software, the management or operation of Data Processing Installations (DPIs) or related services; and

(b) Contracts under which contractor personnel must have physical or electronic access to sensitive automated information, or automated information that supports mission-critical functions.

**1804.470-3 Contract clauses.**

The contracting officer shall insert the clause substantially as stated at 1852.204-76, Security Requirements for Unclassified Automated Information Resources, in solicitations and contracts involving unclassified automated information resources. Paragraph (a) of the clause shall be completed with information supplied by the cognizant requiring activity.

### Subpart 1804.6—Contract Reporting

**1804.601 Record requirements.**

The Headquarters Office of Procurement (Code HC) is responsible for meeting the requirements of FAR 4.601, based on installation submission of Individual Procurement Action Reports (NASA Form 507 series) data.

**1804.602 Federal Procurement Data System. (NASA supplements paragraph (d))**

(d) Code HC is responsible for requesting, obtaining, and reporting Contractor Establishment Codes to the FPDS.

**1804.670 Individual Procurement Action Report (NASA Form 507 series).**

The Individual Procurement Action Report and Supplements (NASA Form 507 series) provide essential procurement records and statistics through a single uniform reporting program as a basis for required recurring and special reports to Congress, Federal Procurement Data Center, and other Federal agencies. The preparation and utilization of the NASA Form 507 series are integral parts of the agencywide Financial and Contractual Status (FACS) system.

**§ 1804.670-1 Applicability and coverage.**

The following procurement actions are individually reportable and require the completion of one or more of the forms in the 507 series.

(a) *Initial basic procurements.* (1) All contracts, regardless of dollar obligation amount.

(2) All grants, cooperative agreements, and funded Space Act agreements.

(3) Intragovernmental procurements and purchase orders when the initial value is more than \$25,000.

(4) All purchase orders for advisory and assistance services.

(5) Purchase orders of \$25,000 or less for services within the four designated industry groups identified at FAR 19.1005(a) under the Small Business Competitiveness Demonstration Program. (These actions are not FACS reportable, but are required for FPDS reports.)

(b) *Modifications.* Modifications that

(1) Obligate or deobligate funds, regardless of dollar amount,

(2) Change the estimated cost and/or fee,

(3) Extend the completion date, or

(4) Add or change procurement statistics previously reported.

**1804.670-2 Submission due date.**

The FACS report shall have information as of the last day of the month and shall arrive in NASA Headquarters not later than the close of business on the fifth work day following each month being reported. The installation procurement officer should establish an agreement with the installation financial officer on a cut-off date for processing contractual documents to ensure that the FACS procurement submission and the FACS financial submission for the month include the same contracts.

**1804.670-3 Preparing Individual Procurement Action Reports (NASA Forms 507, 507A, 507B, 507G, and 507M).**

(a) The information required by the following forms shall be provided when submitting individual Procurement Action Reports:

(1) New contract awards—NASA Forms 507, 507A, and 507B.

(2) New grants, cooperative agreements, funded Space Act agreements, intragovernmental agreements, and orders against federal supply schedules—NASA Forms 507G and 507B.

(3) Modifications to any procurement action—NASA Forms 507M and, if necessary, 507B.

(b) The NASA Forms 507 series shall be prepared in accordance with instructions issued by Code HC. These instructions will be issued and updated through Procurement Information Circulars (PICs).

**1804.671 Committee on Academic Science and Engineering (C.A.S.E.) Report.**

NASA Form 1356, C.A.S.E. Report on College and University Projects, shall be prepared for awards to nonprofit institutions of higher education or to nonprofit institutions that are operationally affiliated or integrated with an educational institution. Information on this form is used to produce reports required by the National Science Foundation and to respond to inquiries. Submission is required regardless of instrument type (contract, grant, cooperative agreement, or funded Space Act agreement) and type of proposal (solicited or unsolicited). Instructions appear on the form itself and constitute the detailed guidance for preparation and submission. The form, which is either included with the acquisition package or initiated by the contracting office, shall be completed, reviewed, and promptly forwarded upon award to the Headquarters Office of Human Resources and Education (Code FET).

**Subpart 1804.8—Government Contract Files**

**1804.802-70 Handling of classified material.**

When a contract is unclassified, classified material relating to that contract shall be maintained in a separate file folder and container, and the unclassified folder shall be marked to indicate the location of the classified material. The front and back of each folder containing classified material shall be marked with the highest classification assigned to any document in the folder.

**1804.803 Contents of contract files.**

**1804.803-70 Checklist.**

NASA Form 1098, Checklist for Contract Award File Content, shall be used as the "top page" in contract files.

**1804.804 Closeout of contract files.**

**1804.804-2 Closeout of the contracting office files if another office administers the contract. (NASA supplements paragraph (b))**

(b) Upon receiving the NASA Form 1611 or DD Form 1594, Contract Completion Statement, from the contract administration office and complying with FAR 4.804-2(b), the contracting officer shall complete the form.

**1804.804-5 Detailed procedures for closing out contract files. (NASA supplements paragraphs (a) and (b))**

(a) When the contracting office retains contract administration (excluding acquisitions under the simplified acquisition threshold), the contracting officer shall comply with FAR 4.804-5(a) by completing NASA Form 1612, Contract Closeout Checklist, and DD Form 1593, Contract Administration Completion Record.

(b) To comply with FAR 4.804-5(b), the contracting officer shall complete NASA Form 1611 or DD Form 1594, Contract Completion Statement, except for acquisitions under the simplified acquisition threshold.

**1804.805 Storage, handling, and disposal of contract files. (NASA supplements paragraph (a))**

(a) See NHB 1441.1, NASA Records Disposition Handbook.

**1804.805-70 Review, separation, and retirement of contract files.**

(a) Upon determination of contract completion under the procedures outlined in 1804.804, each office shall remove the official contract files from the active file series, mark each file folder with "Completed (Date)", and place the folder in a completed (inactive) contract file series. Separate series should be established for contracts of \$25,000 or less and for contracts of more than \$25,000, to facilitate later disposal. Any original or official file copies of documents contained in duplicate or "working" contract files shall be removed and placed in the appropriate official file; any remaining material in the duplicate or "working" file shall be destroyed immediately or

segregated and marked for early disposal.

(b) Each office shall review contractor “general” files (i.e., a file containing documents relating generally to a contractor rather than a specific contract) at least once annually and remove documents that—

(1) Are obsolete or superseded documents relating generally to the contractor (e.g., documents no longer pertinent to any aspect of a contractor’s current or future capability, performance, or programs, and documents relating to a contractor that is no longer a possible source of supplies, services, or technical assistance) and dispose of the documents as authorized in 1804.805; or

(2) Pertain only to completed contracts. Place those files that are not routine in nature in inactive files for later disposal, and immediately dispose of routine documents as authorized in NHB 1441.1, NASA Records Disposition Handbook.

### **Subpart 1804.70—Transfer of Contracting Office Responsibility**

#### **1804.7000 Scope of subpart.**

This subpart contains policies and procedures applicable to the transfer of contracts between NASA installations.

#### **1804.7001 Definition.**

*Transfer of a contract*, as used in this subpart, means that process whereby a contract and all future responsibility for a contract held by one installation are transferred or reassigned in writing to another installation.

#### **1804.7002 Approval of transfer requests.**

(a) The approval authority for requests to transfer a contract is the official in charge of the cognizant Headquarters program office or designee. Requests for approval shall be submitted by the director of the transferring installation after receiving the concurrence of the director of the receiving installation. Concurrence of the Associate Deputy Administrator (Code AI) is also required for a transfer where an installation’s roles and missions may be affected.

(b) Approval of a program transfer by the cognizant Headquarters official constitutes approval to transfer program-related contracts.

#### **1804.7003 Responsibilities of the contracting officer of the transferring installation.**

##### **1804.7003-1 Coordinations.**

The contracting officer of the transferring installation shall take the following steps before transferring the contract:

(a) Agree on a plan and schedule with the contracting officer of the receiving installation for transferring contract responsibility and contract files.

(b) Coordinate with the following offices:

(1) Financial Management Office, to determine the contract financial records to be transferred and the method, timing, and dollar amount of such transfers.

(2) Technical (Engineering and Project) Office, to determine the status of any outstanding engineering changes.

(3) Reliability and Quality Assurance Office, to determine status and method of transferring the reliability and quality assurance functions.

(4) Industrial Property and Facilities Office, to determine the method of transferring the Government property records.

(5) Transportation Office, to determine the status of bills of lading furnished the contractor.

(6) Security Office, to determine whether any classified material is outstanding and whether special precautions are necessary during the transfer process.

(7) Other organizational elements, to determine the status of any other actions such as new technology, materials reports, PERT, and safety.

##### **1804.7003-2 File inventory.**

The contracting officer of the transferring installation shall prepare an inventory of the contract file. This inventory shall also include a separate listing of all outstanding requests for contract administration assistance issued to other Government agencies, indicating the name and address of the

agency office, functions requested to be performed, estimated cost of the services, and estimated reimbursement due the administration agency for the services yet to be performed for each requested function. Copies of this inventory shall be provided to the contracting officer of the receiving installation.

**1804.7003-3 Notifications.**

The contracting officer of the transferring installation shall provide written notification of the planned transfer to the contractor and all agencies performing or requested to perform administration services.

**1804.7003-4 Transfer.**

(a) Upon completion of the actions described in 1804.7003-1 through 1804.7003-3, the contracting officer of the transferring installation shall issue a letter to the contractor, agencies performing contract administration functions, contracting officer representatives, and the contracting officer of the receiving installation. This letter shall provide notification of the transfer date, termination of appointment of the contracting officer's representatives, and the name, mailing address, and telephone number of the contracting officer of the receiving installation.

(b) After issuing the letters described in 1804.7003-4(a), the contracting officer of the transferring installation shall send the contract file to the contracting officer of the receiving installation with a letter transferring contract responsibility. This letter shall contain a provision for acceptance of the responsibility for the contract and its related files by the contracting officer of the receiving installation.

**1804.7003-5 Retention documentation.**

The contracting officer of the transferring installation shall retain for permanent file a copy of the approvals and concurrences required by 1804.7002, the transfer acceptance letter of the contracting officer of the receiving installation, and any additional documents necessary for a complete summary of the transfer action.

**1804.7004 Responsibilities of the contracting officer of the receiving installation.****1804.7004-1 Pre-transfer file review.**

The contracting officer of the receiving installation shall review the contract, letters of request, actions in process, and other related files and to request corrective action, if necessary, before the official transfer of the contract. This review may be waived by written notification to the contracting officer of the transferring installation.

**1804.7004-2 Post-transfer actions.**

The contracting officer of the receiving installation shall—

(a) Provide the contracting officer of the transferring installation written acceptance of contract responsibility and receipt of the contract files;

(b) Inform all offices affected within the installation of the receipt of the contract;

(c) Appoint new contracting officer's technical representatives, as necessary;

(d) Issue a contract modification to provide for the administrative changes resulting from the transfer action (e.g., identifying offices responsible for performing contract administration and making payment and the office to which vouchers, reports, and data are to be submitted);

(e) Provide copies of the contract documents to affected installation offices; and

(f) If appropriate, supplement the letter of request to the Government agency providing contract administration services to reflect the changes resulting from the transfer action. The supplement may terminate or amend an existing contract administration support arrangement or may request support in additional areas.

**Subpart 1804.71—Uniform Acquisition Instrument Identification****1804.7100 Scope of subpart.**

This subpart contains the procedures for uniform numbering of NASA solicitations, contracts (including letter contracts), purchase orders (including requests to other Government agencies), basic ordering agreements, other

agreements between the parties involving the payment of appropriated funds or collection of funds for credit to the Treasury of the United States, and modifications or supplements to these instruments.

#### **1804.7101 Policy.**

(a) Contractual documents shall be numbered with approved prefixes and serial numbers as prescribed in this subpart. If other identification is required for center purposes, it shall be placed on the document in such a location as to clearly separate it from the identification number.

(b) The identification number shall consist of not more than 11 alphanumeric characters positioned as prescribed in this subpart and shall be retained unchanged for the life of the particular instrument.

#### **1804.7102 Prefixes.**

(a) Approved prefixes are as follows:

Installation	Contract prefix	Purchase order prefix
Ames Research Center .....	NAS 2 .....	A
Dryden Flight Research Center ..	NAS 4 .....	E
Goddard Space Flight Center .....	NAS 5 .....	S
Headquarters .....	NASW .....	W
Lyndon B. Johnson Space Center.	NAS 9 .....	T
John F. Kennedy Space Center	NAS10 .....	CC
Langley Research Center .....	NAS 1 .....	L
Lewis Research Center .....	NAS 3 .....	C
George C. Marshall Space Flight Center.	NAS 8 .....	H
NASA Management Office-JPL ..	NAS 7 .....	WO
John C. Stennis Space Center ...	NAS13 .....	NS
Space Station Program Office ....	NAS15 .....	K

(b) The contract prefix shall be used for the following documents:

(1) Contracts, including letter contracts, indefinite-delivery contracts, utilities, leases of real property and renewals.

(2) Easements.

(3) Basic ordering agreements.

(4) Other written agreements involving payment or receipt of funds not covered by 1804.7102(e).

(c) Contracts totally funded under reimbursable arrangements with the department of Energy shall use a DEN prefix instead of the NAS prefix (e.g., DEN 8 for Marshall).

(d) Space Act agreements awarded under the authority of Section 203(c)(5) or 203(c)(6) of the Space Act shall use

an NCA prefix instead of the NAS prefix (e.g., NCA 8 for Marshall).

(e) The purchase order prefix shall be used for purchase orders (including blanket purchase agreements) and requests to other Government agencies to furnish supplies or services.

(f) Solicitations shall be numbered in accordance with installation procedures, except that in all cases the identifying number shall begin with the portion of the installation's contract prefix following "NAS."

(g) If a prefix is required for an installation or office not listed in this section, a request for a prefix assignment shall be submitted to the Headquarters Office of Procurement (Code HC).

#### **1804.7103 Serial numbers.**

(a) Installations shall number contracts and agreements identified in 1804.7102(b) serially by fiscal year. The serial number shall be five digits beginning with a two-digit fiscal year identifier followed by a three digits commencing with "001" and continuing in succession. For example, the first contracts awarded by Ames Research Center in fiscal year 1997 shall be numbered NAS 2 97001 and NAS 2 97002. Fiscal year identification is optional for Space Act agreements.

(b) Serial number for purchase orders shall be assigned serially without fiscal year identification. When the series of numbers exceeds five digits (over 99,999), a new series shall be used, beginning the series with number "1" and followed by the capital letter "A." Should additional series become necessary, they will be distinguished by the capital letters "B," "C," and so forth, as may be required, except that the letters "I" and "O" shall not be used.

#### **1804.7104 Modifications of contracts or agreements.**

(a) Modifications of definitive or letter contracts or agreements shall (1) bear the same identification as the contract or agreement being modified and (2) be numbered consecutively for each contract or agreement, beginning with Modification Number 1, regardless



of whether the modification is accomplished by unilateral or bilateral action. Except for termination notices, modifications shall be effected by the use of Standard Form 30, Amendment of Solicitation/Modification of Contract.

(b) Definitive contracts superseding letter contracts shall retain the same contract number as that originally assigned to the letter contract. Actions definitizing letter contracts are considered modifications and shall be assigned modification numbers in accordance with paragraph (a) of this section.

#### **Subpart 1804.72—Review and Approval of Contractual Instruments**

##### **1804.7200 Contact review by Headquarters.**

(a) Requests for approval of contracts and supplemental agreements by the Associate Administrator for Procurement shall be submitted to the Headquarters Office of Procurement (Code HS) in sufficient time to allow a minimum of 15 days for review.

(b) Each request for approval shall be accompanied by (1) five copies of the contractual document, one of which has been executed by the contractor and contracting officer, and (2) the official contract file containing the appropriate documentation as set forth in FAR 4.803(a). However, for the items specified in FAR 4.803(a) (10), (11), and (12), the contracting officer shall provide documentation pertaining only to the successful offeror; and, in lieu of

the items specified in FAR 4.803(a)(26) (ii) and (iii), the contracting officer shall provide an index briefly describing the content of all previous modifications.

(c) The approval required under this section shall be made by signature of the Associate Administrator for Procurement on the contract/supplemental agreement.

#### **Subpart 1804.73—Procurement Requests**

##### **1804.7301 General.**

Except in unusual circumstances, the contracting office shall not issue solicitations until an approved procurement request, containing a certification that funds are available, has been received. However, the contracting office may take all necessary actions up to the point of contract obligation before receipt of the approved procurement request certifying that funds are available when—

(a) Such action is necessary to meet critical program schedules;

(b) Program authority has been issued and funds to cover the procurement will be available prior to the date set for contract award or contract modification; and

(c) The procurement officer authorizes such action in writing before solicitation issuance.

(d) The solicitation includes the clause at FAR 52.232-18, Availability of Funds. The clause shall be deleted from the resultant contract.

## SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

### PART 1805—PUBLICIZING CONTRACT ACTIONS

#### Subpart 1805.1—Dissemination of Information

Sec.

1805.101 Methods of disseminating information.

#### Subpart 1805.2—Synopsis of Proposed Contracts

1805.201 General.

1805.205 Special situations.

1805.207 Preparation and transmittal of synopses.

1805.207-70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.

#### Subpart 1805.3—Synopsis of Contract Awards

1805.303 Announcement of contract awards.

1805.303-70 NASA Headquarters public announcement.

1805.303-71 Notification to the Administrator of significant procurement actions.

#### Subpart 1805.4—Release of Information

1805.402 General public.

1805.403 Requests from Members of Congress.

#### Subpart 1805.5—Paid Advertisements

1805.502 Authority.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40543, Aug. 5, 1996, unless otherwise noted.

#### Subpart 1805.1—Dissemination of Information

##### **1805.101 Methods of disseminating information. (NASA supplements paragraph (b))**

(b)(4) For NASA policy regarding paid advertisements, see 1805.502.

### Subpart 1805.2—Synopsis of Proposed Contracts

#### **1805.201 General. (NASA supplements paragraph (a))**

(a)(i) Except for acquisitions described in (a)(ii) of this section, a copy of each synopsis shall be made available on the Internet as well as published in the CBD.

(ii) Midrange acquisitions (see part 1871) with annual values of up to \$500,000 shall be made available only on the Internet.

#### **1805.205 Special situations. (NASA supplements paragraph (a))**

(a) Potential sources responding to R&D advance notices shall be added to the appropriate solicitation mailing list for the subsequent solicitation and, if they do not appear on the solicitation mailing lists established in accordance with FAR 14.205-1, shall be requested to submit Standard Form 129, Solicitation Mailing List Application. Responding sources on established lists may be requested to submit amended applications in order to reflect their current capabilities.

#### **1805.207 Preparation and transmittal of synopses.**

##### **1805.207-70 Synopses of Architect-Engineer Services and Federal Information Processing Resources.**

(a) Architect-engineering services. (1) Each notice publicizing the acquisition of architect-engineer services shall be headed "C. Architect-Engineer Services."

(2) In addition to meeting the requirements of FAR 5.207(c), the project description shall—

(i) State the relative importance the Government attaches to the significant evaluation criteria and the date by which responses to the notice must be received, including submission of Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, if required;

(ii) Describe any specialized qualifications, security classifications, and

limitations on eligibility for consideration;

(iii) Describe qualifications or performance data required from architect-engineer firms; and

(iv) If the acquisition is to be set aside for small business, state this fact, indicating the specific size standard to be used and requiring that eligible responding firms submit a small business representation.

(3) Contracting officers shall add at the end of the synopsis:

See Note 24. Provisions of Note 24 apply to this notice except that (a) in the sentence beginning "Selection of firms for negotiations," the fourth additional consideration listed is changed to read: "(4) past experience, if any, of the firm with respect to performance on contracts with NASA, other Government agencies, and private industry;" and (b) in the last sentence, "National Aeronautics and Space Administration" is substituted for "Department of Defense."

(b) Federal Information Processing (FIP) Resources. (1) When total requirement quantities are expected to satisfy the needs of only a single field installation, each notice publicizing the acquisition of FIP resources under an indefinite delivery/indefinite quantity contract or under a contract that includes options for additional quantities of such resources shall include the following:

The \_\_\_\_ (identify contracting activity) is the primary delivery point for the items described in this synopsis. However, NASA may order delivery to the following alternate locations: \_\_\_\_ (List other NASA installations and their locations).

(2) When the contemplated contract will authorize orders from locations other than the awarding installation, the notice shall fully describe the ordering scope.

### Subpart 1805.3—Synopsis of Contract Awards

#### 1805.303 Announcement of contract awards. (NASA supplements paragraph (a))

(a)(i) In lieu of the \$3 million threshold cited in FAR 5.303(a), NASA Headquarters public announcement is required for award of contract actions that have a total anticipated value, excluding unexercised options, of \$25 mil-

lion or greater. This threshold applies to new awards, contract modifications, and option exercises, but not to incremental funding or cost overrun modifications.

(A) For undefinitized contract actions, the not-to-exceed (NTE) or ceiling price value is the face value.

(B) For indefinite delivery, time and material, labor hour, and similar contracts, the estimated amount of the basic contract is the face value. Individual orders up to the face value shall not be announced regardless of value. However, after the face value is reached, any subsequent modifications or orders of \$25 million or greater must be announced.

(ii) NASA Headquarters public announcement is also required for award of a contract action with a value of less than \$25 million if the contracting officer believes it to have Agency public information implications.

(iii) Contractual instruments requiring Headquarters public announcement shall not be distributed nor shall any source outside NASA be notified of their status until the public announcement procedures in 1805.303-70 have been completed.

#### 1805.303-70 NASA Headquarters public announcement.

(a) For those contract actions requiring Headquarters public announcement in accordance with 1805.303, the contracting officer shall furnish a draft news release including the following information, through the installation Public Affairs Office, via facsimile transmission to the Headquarters Office of Public Affairs, News and Imaging Branch (Code PM):

(1) A brief description of the work, including identification of the program and project;

(2) Identification of the contract action as either a new contract or additional work of services under an existing contract;

(3) Contract type. For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The dollar amount authorized for the instant action and the estimated

total cost of the contract if this is different. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) Name and address (including zip code) of the contractor;

(6) Principal work performance locations;

(7) Names and addresses of any unsuccessful offerors.

(b) The information in paragraph (a) of this section shall be provided to Code PM before transmitting a letter contract to a contractor for signature. For actions other than letter contracts, the information should be transmitted to Code PM after contractor signature, if applicable, no later than 48 hours before the planned award.

(c) For contract actions requiring Headquarters approval in accordance with 1804.72, the draft news release required by paragraph (a) of this section shall be provided to the Headquarters Office of Procurement (Code HS) with the request for approval. Code HS will forward the information to Code PM after approval.

(d) Code PM will advise the installation Public Affairs Office of the date public announcement of the contract action will be made. Installations may proceed with award and local release of the information no earlier than 4:00 p.m. ET of the date Code PM makes public announcement. If earlier award is considered appropriate, installations must request authorization from the Associate Administrator for Procurement (Code HS).

**1805.303-71 Notification to the Administrator of significant procurement actions.**

(a) In addition to the public announcement requirements described in 1805.303-70, contracting officers shall notify the Administrator of the following procurement actions at least five (5) workdays prior to planned public announcement of the actions:

(1) Planned contract award for competitive acquisitions of \$25 million or more, including all priced options.

(2) Planned contract award of non-competitive awards and new work modifications of \$100 million or more, including all priced options.

(3) Planned award of other procurement actions at any dollar value thought to be of significant interest to Headquarters.

(b) To provide notification to the Administrator, the contracting officer shall send the information listed in paragraphs (b) (1) through (10) of this subsection to the Headquarters Office of Procurement (Code HS) via facsimile transmission (202-358-4065). Immediately prior to transmission, the contracting officer shall notify Code HS by telephone (202-358-2080) of the impending transmission. In accordance with FAR 3.104-5(c), the contracting officer shall mark all pages that include source selection information with the legend "SOURCE SELECTION INFORMATION—SEE FAR 3.104." The following information shall be sent:

(1) Title and a brief nontechnical description of the work, including identification of the program or project;

(2) Identification of the contract action as either a new contract or additional supplies or services under an existing contract;

(3) Contract type (including whether a cost contract is completion or level-of-effort). For undefinitized contract actions, identify the planned contract type of the definitized instrument;

(4) The total contract value for the instant action including all priced options. Also include the Government's most probable cost. For undefinitized contract actions, indicate the NTE or ceiling price amount;

(5) The name, address, and business size status of the prime contractor and each major (over \$1M) subcontractor;

(6) Small business and small disadvantaged business subcontracting goals both in dollars and percentage of the value of the action including all options;

(7) Principal work performance locations;

(8) Brief description of any unusual circumstances;

(9) The names and telephone numbers of the contracting officer and project manager; and

(10) *For competitive selections only*, provide on a separate attachment the names and addresses of all unsuccessful offerors and a brief explanation of the general basis for the selection.

(c) The field installation shall not proceed with any awards or announcements until Code HS has advised that the Administrator has been notified of the proposed action and the supporting information. Once this advice is received from Code HS, the field installation shall proceed with the public announcement procedures described in 1805.303-70.

#### Subpart 1805.4—Release of Information

##### **1805.402 General public. (NASA paragraphs (1) and (2))**

(1) Unless the head of the contracting activity determines that disclosure would be prejudicial to the interests of NASA, installation Public Affairs Offices may make public the following information on NASA acquisitions:

(i) The names of firms invited to submit offers;

(ii) The names of firms that attended any pre-bid or pre-proposal conference; and

(iii) The names of firms that submitted offers.

(2) Other requests for information under the Freedom of Information Act shall be processed in accordance with FAR 24.2 and 1824.2.

##### **1805.403 Requests from Members of Congress. (NASA supplements paragraph (a))**

(a) All proposed replies to congressional inquiries shall be prepared and forwarded, with full documentation, to the Headquarters Office of Legislative Affairs (Code L) for approval and release.

#### Subpart 1805.5—Paid Advertisements

##### **1805.502 Authority.**

Use of paid advertisements for procurement purposes (except CBD announcements) is not authorized in NASA.

## **PART 1806—COMPETITION REQUIREMENTS**

### **Subpart 1806.2—Full and Open Competition After Exclusion of Sources**

Sec.

1806.202 Establishing or maintaining alternative sources.

1806.202-70 Formats.

### **Subpart 1806.3—Other Than Full and Open Competition**

1806.302 Circumstances permitting other than full and open competition.

1806.302-4 International agreement.

1806.302-470 Documentation.

1806.302-7 Public interest.

1806.303 Justifications.

1806.303-1 Requirements.

1806.303-170 Sole-source purchases by contractors.

1806.303.2 Content.

1806.303-270 Use of unusual and compelling urgency authority.

1806.304-70 Approval of NASA justifications.

### **Subpart 1806.5—Competition Advocates**

1806.501 Requirement.

1806.502 Duties and responsibilities.

Authority: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 40545, Aug. 5, 1996, unless otherwise noted.

### **Subpart 1806.2—Full and Open Competition After Exclusion of Sources**

#### **1806.202 Establishing or maintaining alternative sources. (NASA supplements paragraphs (a) and (b))**

(a) The authority of FAR 6.202 is to be used to totally or partially exclude a particular source.

(b) The supporting data and the D&F must name the source to be excluded and shall include the following information as applicable and any other relevant information:

(i) The specific purpose to be served in excluding the source as enumerated in FAR 6.202(a).

(ii) The acquisition history of the supplies or services, including sources, prices, quantities, and dates of award.

(iii) The circumstances making it necessary to exclude a particular source from the contract action:

## § 1806.202-70

(A) Reasons for lack of sources; e.g., the technical complexity and criticality of the item.

(B) Current annual requirement and prospective needs for the supplies and services.

(C) Projected future requirements.

(iv) Whether the existing source must be totally excluded from the action or whether a partial exclusion is sufficient.

(v) The potential effect of exclusion on the excluded source in terms of any loss of capability to furnish the supplies or services in subsequent contract actions.

(vi) When the authority of FAR 6.202(a)(1) is cited, the basis for—

(A) Assumptions regarding future competition; and

(B) The determination that exclusion of a particular source will likely result in reduced overall costs for anticipated future acquisitions, including (as a minimum) discussion of start-up costs, costs associated with facilities, duplicative administration costs (such as for additional inspection or testing), economic order quantities, and life-cycle-cost considerations.

(vii) When an additional source or additional sources must be established to provide production capacity to meet current and mobilization requirements—

(A) The current annual and the mobilization requirements for the item, citing the source of, or the basis for, the planning data;

(B) A comparison of current production capacity with current and mobilization requirements; and

(C) The hazards of relying on the present source and the time required for new sources to acquire the necessary facilities and skills and achieve the production capacity necessary to meet requirements.

### § 1806.202-70 Formats.

A sample format for D&Fs citing the authority of FAR 6.202(a) follows:

## 48 CFR Ch. 18 (10-1-96 Edition)

National Aeronautics and Space  
Administration, Washington, DC 20546

### Determination and Findings

#### Authority to Exclude a Source

On the basis of following findings and determination, which I make under the authority of 10 U.S.C. 2304(b)(1) as implemented by FAR 6.202, the proposed contract action described below may be awarded using full and open competition after exclusion of \_\_\_\_ (1).

#### Findings

1. It is proposed that the following requirement be acquired using full and open competition after exclusion of the source identified above.

2. The source identified above can be expected to receive an award for this requirement unless excluded.

3. It is necessary to establish or maintain an alternative source or sources.

4. The exclusion of this source will increase or maintain competition and is likely to result in reduction of \_\_\_\_ (2) in overall costs for any anticipated acquisition of the supplies or services being acquired. This estimate is based on \_\_\_\_ (3).

(See Note 4 for the use of Alternates I and II below.)

Alternate I: The exclusion of this source will serve the national defense interest by having an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization, because \_\_\_\_ (5).

Alternate II: The exclusion of this source will serve the national defense interest by establishing or maintaining an essential engineering, research, or development capability of an educational or other nonprofit institution or a federally funded research and development center, because \_\_\_\_ (5).

#### Determination

The exclusion of the source identified above will increase or maintain competition and is likely to result in reduced overall costs for any anticipated acquisition of the supplies or services being acquired.

(See Note 4 for the use of Alternates I and II below.)

Alternate I: It is in the interest of the national defense to exclude the source identified above in order to have an alternative supplier available for furnishing the supplies or services being acquired, in case of a national emergency or industrial mobilization.

Alternate II: It is in the interest of national defense to exclude the source identified above in order to establish or maintain

an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center.

Date \_\_\_\_\_

NOTES:

1. Name of source to be excluded.
2. Description of estimated reduction in overall costs.
3. Description of how estimate was derived.
4. In paragraph 4 and in the Determination, the basic wording is appropriate when FAR 6.202(a)(1) applies; Alternate I is appropriate when FAR 6.202(a)(2) applies; and Alternate II is appropriate when FAR 6.202(a)(3) applies.
5. Description of circumstances necessitating the exclusion of the identified source.

### Subpart 1806.3—Other Than Full and Open Competition

#### § 1806.302 Circumstances permitting other than full and open competition.

##### § 1806.302-4 International agreement.

##### § 1806.302-470 Documentation.

Pursuant to 10 U.S.C. 2304(f)(2)(E), an individual justification for other than full and open competition under the authority of FAR 6.302-4 is not required when the procurement officer signs a Memorandum for the Record that:

- (a) Describes the specific terms of the international agreement or treaty that limit acquisitions in support of, or as a result of, the agreement or treaty to less than full and open competition;
- (b) Is reviewed and approved by the appropriate competition advocate in accordance with NFS 1806.304-70; and
- (c) Is included in each official contract file in the place for filing a Justification for Other than Full and Open Competition (see NASA Form 1098).

##### 1806.302-7 Public interest. (NASA supplements paragraph (c))

(c)(2) The notice to Congress shall be made by NASA Headquarters, Office of Legislative Affairs (Code LC). Code HS shall request the notice to be made immediately upon approval of a D&F and shall advise the contracting activity of the date upon which the notification period ends.

(3) The contracting officer shall prepare the D&F required by FAR 6.302-

7(c)(1) in any format that clearly documents the determination and the supporting findings.

#### 1806.303 Justifications.

##### 1806.303-1 Requirements. (NASA supplements paragraphs (b) and (d))

(b) Justifications for using less than full and open competition may be prepared by the technical office initiating the contract action when it is recommending the use of the justification authority, or by the contracting officer if the technical office does not make such a recommendation.

(d) The contracting officer shall send a copy of each approved justification or D&F that cites that authority of FAR 6.302-1 (a)(2)(i) or FAR 6.302-7 to NASA Headquarters, International Relations Division (Code IR), unless one of the exceptions at FAR 25.403 applies to the acquisition. The transmittal shall indicate that the justification is being furnished under FAR 6.303-1(d).

##### 1806.303-170 Sole-source purchases by contractors.

The requirements of FAR part 6 and this part 1806 apply if NASA directs a prime contractor (by specifications, drawings, parts lists, or otherwise) to purchase items on a sole-source basis. Accordingly, procurement officers shall take necessary actions to ensure that such sole-source acquisitions are properly justified. Where "brand name or equal" purchase descriptions list the salient physical, functional, or other characteristics of the item being procured and are properly used under 1811.104, the justification requirements of FAR part 6 and this part 1806 do not apply.

#### 1806.303-2 Content.

##### 1806.303-270 Use of unusual and compelling urgency authority.

If the authority at FAR 6.302-2 is used for extending the performance period of an existing services contract, the justification shall contain the information required by FAR 6.303-2 and:

(a) Documentation that the acquisition process for the successor contract was started early enough to allow for adequately planning and conducting a full and open competition, together

with a description of the circumstances that prevented award in a timely manner; and

(b) Documentation of the reasons why no other source could practicably compete for the interim requirement.

**1806.304-70 Approval of NASA justifications.**

Concurrences and approvals for justifications of contract actions conducted in accordance with FAR subparts 6.2 and 6.3 shall be obtained as follows:

(a) For proposed contracts over \$500,000 but not exceeding \$10,000,000—

(1) Concurring official: Procurement Officer

(2) Approving official: Center or Headquarters Competition Advocate.

(b) For proposed contracts over \$10,000,000 but not exceeding \$50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(2) Approving official: Center Director or Associate Administrator for Headquarters Operations.

(c) For proposed contracts over \$50,000,000—

(1) Concurring officials:

(i) Procurement Officer

(ii) Center or Headquarters Competition Advocate

(iii) Center Director or Associate Administrator for Headquarters Operations

(iv) Agency Competition Advocate

(2) Approving Official: Associate Administrator for Procurement

(d) The approval authority of FAR 6.304(a)(3) may not be delegated to other than the installation's Deputy Director.

(e) For proposed contract actions requiring approval by the Associate Administrator for Procurement, the original justification shall be forwarded to the Associate Administrator for Procurement (Code HS).

(f) Regardless of dollar value, class justifications shall be approved by the Associate Administrator for Procurement.

**Subpart 1806.5—Competition Advocates**

**1806.501 Requirement. (NASA paragraphs (1), (2), (3) and (4))**

(1) The Deputy Associate Administrator for Procurement is the agency competition advocate, reporting to the Associate Deputy Administrator on issues related to competition of NASA acquisitions.

(2) The Center Deputy Directors or Associate Directors are the competition advocates for their contracting activities.

(3) The Director, Program Operations Division, Code HS, is the competition advocate for the Headquarters contracting activity.

(4) The Deputy Manager is the contracting activity competition advocate for the Space Station Program Office.

**1806.502 Duties and responsibilities. (NASA supplements paragraph (b))**

(b)(i) Center competition advocates shall submit annual reports to the agency competition advocate (Code HS) on or before November 30.

(ii) The agency competition advocate shall submit an annual agency report on or before January 31.

**PART 1807—ACQUISITION PLANNING**

**Subpart 1807.1—Acquisition Plans**

Sec.

1807.103 Agency-head responsibilities.

1807.105 Contents of written acquisition plans.

1807.170 Acquisition Strategy Meeting (ASM)

**Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities**

1807.204 Responsibilities of contracting officers.

**Subpart 1807.3—Contractor Versus Government Performance**

1807.307 Appeals.

**Subpart 1807.5—Inherently Governmental Functions**

1807.503 Policy.



**Subpart 1807.70—Reserved****Subpart 1807.71—Master Buy Plan**

- 1807.7100 General.
- 1807.7101 Applicability.
- 1807.7102 Submission, selection, and notification procedures.
- 1807.7102-1 Submission of Master Buy Plan.
- 1807.7102-2 Submission of amendments to the Master Buy Plan.
- 1807.7102-3 Selection and notification procedures.
- 1807.7103 Format of Master Buy Plan.

**Subpart 1807.72—Acquisition Forecasting**

- 1807.7200 Scope of subpart.
- 1807.7201 Definitions.
- 1807.7202 Policy.
- 1807.7203 Responsibilities.
- 1807.7204 Forecast data.
- 1807.7205 Public availability.

AUTHORITY: 42 U.S.C. 2473(c)(1).

SOURCE: 61 FR 47068, Sept. 6, 1996, unless otherwise noted.

**Subpart 1807.1—Acquisition Plans****1807.103 Agency-head responsibilities. (NASA supplements paragraphs (d) and (e))**

(d)(i) Except as provided in paragraph (d)(iii) of this section, acquisition plans shall be prepared according to the following:

(A) For acquisitions requiring Headquarters approval, by an Acquisition Strategy Meeting (ASM) (see 1807.170);

(B) For acquisitions not requiring Headquarters approval and expected to exceed \$5 million, by installation-approved ASMs or written acquisition plans; and,

(C) For acquisitions not expected to exceed \$5 million, in accordance with installation procedures.

(ii) The estimated dollar amounts shall include all options and later phases of the same program or project.

(iii) Acquisition plans are not required for the following acquisitions:

- (A) Architect-engineering services;
- (B) Broad agency announcements (see 1835.016) or unsolicited proposals;
- (C) Basic research from nonprofit organizations;
- (D) Utility services available from only one source;
- (E) From or through other Government agencies;

(F) Industrial facilities required in support of related contracts; or

(G) MidRange procedure awards (see part 1871). However, acquisition plans are required for commercial item acquisitions that exceed the MidRange dollar thresholds for noncommercial items.

(iv) Acquisition plans shall be approved before soliciting proposals.

(v) Approval of an acquisition plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR 1.4 and 1801.4.

(vi) A single acquisition plan may be used for all phases of a phased acquisition provided the plan fully addresses each phase, and no significant changes occur after plan approval to invalidate the description of the phases. If such significant changes do occur, the plan shall be amended and approved at the same level as the original plan.

(e) Acquisition plans should be prepared on a program or system basis when practical. In such cases, the plan should fully address all component acquisitions of the program or system.

**1807.105 Contents of written acquisition plans. (NASA supplements paragraphs (a) and (b))**

Acquisition plans shall address each applicable topic listed in FAR 7.105, as supplemented by this section. Plans shall be structured by subject heading using each italicized topic heading in the same sequence as presented in the FAR. Subheadings should be used when appropriate (e.g., the separate items under contracting considerations at 7.105(b)(4)). Topics not applicable to a given acquisition (e.g., design-to-cost and should-cost are not compatible with service acquisitions), should be marked N/A.

(a)(1) Describe in nontechnical terms the supplies or services to be acquired. Include quantities.

(3) Identify the estimated cost and describe the estimating methodology.

(5) Specify the delivery or performance period requirements separately by

the basic contract, each option, and the total.

(8) Streamlining applies to all NASA acquisitions. Describe all planned streamlining procedures.

(b)(3) Address how cost realism will be evaluated.

(4)(A) If an incentive contract is planned, describe the planned incentive(s) and the anticipated effects.

(B) Describe subcontracting issues, including all applicable subcontracting goals. (See FAR part 19 and part 1819).

(5)(A) Identify the estimated cost separately by the basic contract, each option and total amount.

(B) Identify the funding by fiscal year and unique project number (UPN).

(C) Discuss planned approaches to eliminate funding shortfalls (vs. the estimated cost).

(6) Identify the type of work statement/specification planned. Specifically address the applicability of performance-based requirement descriptions and the availability of commercial sources for the supplies/services.

(10) Address contract management issues, including planned delegations of administrative functions.

(19) If the period between release of solicitation to contract award is more than 120 calendar days (180 days for formal SEB competitions), explain why that goal cannot be met.

#### **1807.170 Acquisition Strategy Meeting (ASM).**

(a) The ASM is an acquisition plan conducted through a meeting attended by all interested NASA offices. At the meeting, the acquisition plan topics and structure specified in 1807.105 are presented in briefing format, and formal written minutes prepared to summarize the decision, actions, and conclusions of the ASM members. The approved minutes, along with the briefing charts, shall be included in the contract file to document completion of the acquisition plan required by 1807.103.

(b) The ASM is not a requirements definition meeting. It is a meeting to seek approval for the proposed acquisition approach for requirements that were previously defined and agreed to by the cognizant offices.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or designee. The Headquarters Office of Procurement (Code HS) will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For field installation ASMs, the minutes shall be approved in accordance with installation procedures.

### **Subpart 1807.2—Planning for the Purchase of Supplies in Economic Quantities**

#### **1807.204 Responsibilities of contracting officers.**

(NASA supplements paragraph (a))

(a) The contracting officer shall transmit in writing to the cognizant inventory management/requirements office either the actual offeror responses or a summary of their salient points. The transmittal should be made within five working days after the closing date for receipt of offers; however, if a response indicates the potential for a significant savings, it should be transmitted immediately.

### **Subpart 1807.3—Contractor Versus Government Performance**

#### **1807.307 Appeals. (NASA supplements paragraph (a))**

(a) Installations shall establish appeals procedures in accordance with NMI 7410.3, Delegation of Authority for Acquisition of Commercial Activities for NASA's Use.

### **Subpart 1807.5—Inherently Governmental Functions**

#### **1807.503 Policy. (NASA supplements paragraph (e))**

(e) The field installation requirements office shall provide the contracting officer the written determination that none of the statement of work tasks are inherently governmental. Disagreements regarding the determination shall be resolved in accordance with installation procedures.